

1 SUPREME COURT OF THE STATE OF NEW YORK
2 BRONX COUNTY : CRIMINAL TERM : PART 1

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4 THE PEOPLE OF THE STATE OF NEW YORK,

5 -against-

IND. NO.
3825/2006

6 RICARDO JIMENEZ,

7 Defendant(s)

Trial

8 -----

9 July 10, 2007

10 851 Grand Concourse
11 Bronx, New York 10451

12 B E F O R E:

13 THE HONORABLE ROBERT TORRES,
14 JUSTICE.

15 A P P E A R A N C E S:

16 ROBERT T. JOHNSON, ESQ.
District Attorney, Bronx County
17 BY: LISA MATTAWAY, ESQ.,
DEBRA GUARNIERI, ESQ.
Assistant District Attorneys

18
19 PATRICK BRUNO, ESQ.
BRIAN WILSON, ESQ.
20 Attorneys for the Defendant

21 Also Present: MR. JOSEPH SHMULEWITZ, Intern

22


23

24

25

Catherine Mercorella,
Senior Court Reporter

FILED

JUL 18 

SUPREME COURT CLERK'S OFFICE
BRONX COUNTY

1 THE CLERK: Case on trial continues.

2 THE COURT: Is there anything I need to
3 address before we proceed?

4 MR. BRUNO: No, sir. Thank you.

5 THE COURT: Bring the jury in, please.

6 (Whereupon, the jury enters the
7 courtroom.)

8 THE COURT: Good morning, ladies and
9 gentlemen. I hope you had a nice evening and a nice
10 day yesterday. I do apologize for the delay bringing
11 you out. It could not be helped. It actually
12 related to matters having nothing to do with the case
13 before you. There are some other matters I had to
14 address. I do apologize. We will now proceed to the
15 closing arguments.

16 Mr. Bruno.

17 MR. BRUNO: Thank you, Sir.

18 May it please his Honor, my colleague, Ms.
19 Guarnieri, Ms. Mattaway, our foreman, members of the
20 jury and our remaining alternates. I start out by
21 sincerely thanking you for your service. We took you
22 for close to a month now, we took you from your
23 families, your business, and you patiently listened
24 to us, waited for us, et cetera. So, thank you
25 kindly.

1 I obviously have a number of comments to
2 make. I will try within reason to follow the order
3 of the trial sharing with you what I think is
4 important and noteworthy.

5 The first witness was Kevin Morrissey, the
6 man from the barge. He tells us -- well, to be
7 exact, he tells us that he gets arrested on 9/6/06,
8 September 6, after getting caught for another scam to
9 fund his Jersey shore trip. In a crazy sort of way,
10 he was almost charming. He's the eternal con man,
11 the eternal conniver. He tells you candidly, I ended
12 up in jail on the barge trying to fund my vacation.

13 What I believe is significant is he's
14 arrested 9/6. He meets Mr. Jimenez on the barge.
15 Jimenez gets locked up, if you recall, August 31.
16 So, they are arrested within a week. That will be
17 significant in a moment.

18 As I already alluded to, this is a man who
19 is a con man. It goes very much to credibility, to
20 how much weight you can give this guy based upon his
21 record. We don't know before that. I can't comment.
22 But, based on his record alone for the last 13 years,
23 he's supporting himself by fooling people, and I'm
24 not being trite.

25 In evaluating Morrissey, you have to say

1 to yourself, Is he fooling me? Is he conning me? Is
2 he cutting still another deal in this case, not to
3 pass a certified check but to pass phony testimony to
4 cut a deal in Queens. It's that straight forward; it
5 really is.

6 And, he tells you that I have cases
7 pending. All the same format. Certified checks, I
8 used them to buy a car. I then sell the car. That's
9 my profit. Quick turnover. And, ironically, and I
10 would feel remiss if I didn't mention it, the irony
11 here sounds moralistic for one second, this is a guy
12 who could have made an exceptional living with the
13 family business. You can make a few bucks being the
14 third generation selling Cadillacs, Pontiacs and
15 Buicks, but he chose not to. All right.

16 Anyway, he has cases pending in Queens,
17 Nassau, Suffolk, Brooklyn and Bergen County, New
18 Jersey, and he needs a break in Queens, Queens being
19 the hard-noses, as it were.

20 With reference to this case, what does he
21 tell us? Well, he first hooks up with Mr. Jimenez in
22 the context of being what we commonly call a
23 jailhouse lawyer. He's going to assist Jimenez with
24 reference to his due process issue. In layman's
25 terms, was he treated unfairly by not being

1 prosecuted for 18 years? I'm not raising that as an
2 issue. That's what the due process issue is. And,
3 he's going to do whatever research; he's going to aid
4 Jimenez in whatever motions. He thinks he's going to
5 assist me without my request, but that's not
6 offensive either. They do it all the time.

7 In any event, the next pivotal point I
8 want to make, I want to, yeah, kind of drill on, as
9 it were, is he'll have you believe that he does his
10 lawyer work, his due process research, his research
11 on this case without ever looking at a bit of what we
12 use the term "discovery," a bit of the files, the
13 legal documents that we accumulate preparing for
14 trial. No, no, I never touched them. It's my policy
15 not just in this case. I never. I make it a policy
16 not to look at discovery. He threw in the federal
17 term, the 3500 materials.

18 And what does he tell you that I think
19 also tells you a lot? He's a sharp jailhouse lawyer.
20 All of a sudden, he tells you something very, very
21 dopey. I make it a policy not to because then down
22 the road they could subpoena me to come in at a later
23 date. And do what? Say, yeah -- say, yeah --
24 forget him -- yeah, I looked at discovery for
25 Defendant Smith, and the discovery says the sky was

1 green that day? Of course not. Witnesses say that.
2 You don't bring in the jailhouse lawyer to quote what
3 some cop may have written or some witness may have
4 written in a written statement. Of course not. He
5 tried to give you a dopey justification. Why? You
6 know where I went with this.

7 Oh, he tells you, in fact in very good
8 lawyerese terms, no, no, no, no, in discussing this
9 with Jimenez and relating it to you, I rely upon oral
10 admissions. In other words, he confessed to me.
11 Very slick.

12 And he tells you he's worked in that
13 context at least twice before, meaning so-called
14 cooperating, but I relied upon oral submissions.
15 Quite slick.

16 And he tells you -- well, I brought out as
17 another point, and you'll see a trend here, a lot of
18 stuff had to be dragged out by me not because I'm a
19 hero or genius. It kind of sets a tone. It will all
20 go to reasonable doubt at the end. I elicit he sends
21 a letter to this marshal Craig Kane and, again, I
22 pointed out it's not like it's, Dear Craig, I got
23 some information for you.

24 Let's pull that together. Think about it.
25 Common sense. No need to be a lawyer, a judge.

1 Common sense. Of all the people on the barge -- all
2 right? -- let's get to the nitty-gritty, he's telling
3 you that Mr. Jimenez confesses to him, breaks down,
4 says I did it. Of all the people on the barge, is
5 that the type you're going to trust? This white
6 collar, white bred con man from Long Island? That's
7 who Jimenez is going to take under his arm and trust
8 and confide in that I did a murder? Common sense.
9 That's the man he's going to trust and confide in?
10 Trivia. Again, trivia. That, I think, goes to what
11 his game plan was.

12 Two small points: Gee, you know, I
13 thought it was an Irish attorney. Why? Because his
14 name was like Patrick or Brian, which ironically my
15 assistant here is Brian, but he didn't know that. I
16 thought it was Patrick or Brian, one of those Irish
17 guys. Where did he get that from? As I brought out
18 facetiously, you didn't look at the discovery with
19 all my communications to Jimenez signed Patrick
20 Bruno? No. That couldn't be the reason. And a
21 second point, maybe more compelling, when he writes
22 to Craig, the federal marshal buddy, it's perhaps you
23 should, in so many words, perhaps you should reach
24 out to the D.A. who looked into this, Anna Villa.

25 And during the course of this trial, you

1 garnered a lot of facts, I hope, but a basic
2 nitty-gritty fact, Miss Mattaway has had this matter
3 from the get go. I submit to you, you're the jury, I
4 will say it repeatedly, you call it finally, but I
5 will submit to you, could it be this D.A. Anna Villa
6 got involved 18 years ago during the initial
7 investigation? Could it be Anna Villa appeared in
8 the discovery? Nah, the con man wouldn't let you
9 believe that. No, no, that can't be. Never looked
10 at it. That's my policy.

11 Folks, a final comment on Morrissey, and
12 I'll move on. Everything he told you -- again, no
13 hocus pocus, common sense -- everything he told you
14 appeared two places. The first one I mentioned
15 repeatedly, the discovery, all the lawyer papers and
16 statements and minutes, but the second one -- from
17 when you walked in the courtroom for voir dire, the
18 judge told you what? This case appeared in the
19 papers extensively 18 years ago and when there was
20 the arrest August 31, six days before they picked up
21 Morrissey.

22 What am I saying? Everything he told you,
23 this whole confession, all those facts were in the
24 discovery and in the Post and the News, et cetera.
25 He wanted you to believe him. You know, I'm not that

1 concerned with getting a break in Queens. Not that
2 concerned? Again, I had to elicit it. You can get
3 one-and-a-half to three if you wrap them all up.
4 Queens is adamant at three-and-a-half to seven. No,
5 it's not a big difference. You judge what's not a
6 big difference.

7 Then the next witness was the Crime Scene
8 detective, Detective Victoria Burton, on the job
9 16-and-a-half years, with Crime Scene 13 years. And,
10 again not critically, she had to kind of fill in
11 because the Crime Scene person, like many of the
12 people here, are long ago retired.

13 So, anyway, she tells you that Detective
14 Goodman, the original Crime Scene person 18 years
15 ago, goes to the scene and recovers a number of
16 ballistic items, and we'll have a lot of discussion
17 of ballistics as I go along. I will try to keep it
18 concise.

19 Goodman recovers a .45 caliber shell,
20 meaning an empty spent shell from an automatic
21 weapon; one lead bullet, meaning a bullet that's been
22 fired, it's out of the shell, as it were; a firearm,
23 which I'll get to in a minute, which contained three
24 live entire cartridges and one spent, one empty,
25 shell. And she confirms, Detective Burton, that this

1 off-duty officer Velazquez is the one who recovered
2 that weapon.

3 Now, I had to elicit from her, because
4 she, like every other cop here, always had the cop
5 on. Pardon the pun. I'm not a ballistics expert.
6 When I needed to make a point, they got stupid about
7 guns. I'll take care of that. Not being cocky, I'll
8 take care of that. I'll be the amateur ballistics
9 guy within the boundaries set by the court.

10 But, anyway, she grudgingly tells you that
11 Velazquez recovers the gun, and I then had to give
12 her the voucher. It's -- I'm sure you're bored by
13 now -- it's a Smith and Wesson Model 10 four inch.
14 How is it significant? And I elicited from her and
15 one other cop before they got issued these Glocks a
16 couple of years ago that was the New York City P.D.
17 service weapon.

18 MS. MATTAWAY: Objection.

19 THE COURT: Overruled.

20 MR. BRUNO: Folks, it's in the transcript
21 repeatedly. I made sure I got it in there. What I'm
22 saying is she gets stupid about her service weapon.
23 Oh, I'm not a ballistics expert. All right. Enough
24 of that.

25 Be that as it may, we elicit from her

1 certain distinctions. An automatic like a .45
2 automatic, the classic army gun, a .45 automatic
3 ejects the shell, fires the bullet, the shell goes
4 flying out of the gun. In a revolver, the shell, the
5 empty metal casing stays in one of the cylinders, the
6 round things. Six of them, right?

7 How does it matter? It matters because
8 now even if we stop there, and there were more, we
9 have at least two weapons in that theater. We have
10 the .38 Special clutched in the hand of the dead man.
11 I mean, God rest him, but he died clutching a loaded
12 .38 Special. And we have potentially a .45
13 automatic, which, again, not to leave off on a sour
14 note, but that was one of the points that Detective
15 Burton like, you know, oh, I'm not an expert now, the
16 point being, I say, well, the shell found on the
17 floor of the theater, the .45, that's consistent with
18 some .45 caliber weapon being in the theater. And
19 what does she say? No, not necessarily, no.

20 What do you mean, Detective? Like
21 somebody came to the theater and just dropped an
22 empty .45 shell?

23 Yeah.

24 In addition, when she got stupid about the
25 lead bullet was after all my questions became pretty

1 clear the lead bullet comes from a revolver, a
2 jacketed bullet comes from an automatic.

3 Well, Detective, we got a lead bullet
4 found on the carpeting and we have an empty shell in
5 the .38, is that not consistent, obviously, that the
6 .38 fired the lead bullet?

7 No, no. It doesn't mean that.

8 Somebody could have just put an empty
9 shell in the gun?

10 Well, jumping ahead, none other than --
11 we'll get to him -- O'Brien, the guy who's doing nine
12 thousand years tells you we went there strapped, we
13 all had loaded pieces. So, they are going to put an
14 empty shell in the gun? No. That empty shell was
15 the mother, as it were, of the lead bullet on the
16 floor, I submit to you, because I'm not going to poke
17 a joke at the con job. The minute I'm trying to make
18 a point, I'm not a ballistics expert. Lady, you
19 carried that gun. When you fired your .38, the shell
20 was in your gun. End of story.

21 Oh, and here parenthetically there is
22 evidence of discharge in all six chambers. Probably
23 not that night. At some point in history, every
24 chamber of that gun was fired. And, again, don't get
25 misled by my apparent anger, the point being I hope

1 it was obvious to you, and I will develop this, the
2 cops who testified except Serrano, who is retired,
3 you know, he's not looking for his extra gold bar,
4 the cops all, like they all got dumb the minute I was
5 asking something that maybe would help the case.
6 They all got dumb right at that point. I hope you
7 noticed that. That's why I sound hostile. Okay.

8 The next witness, and I will try not to
9 sound too nasty, the next witness was Mike Centeno.
10 Let me start here. Who was he kidding? I'm going to
11 be a nice guy and gentleman. I'm not going to call
12 him a dope, no. I'm going to say what he was calling
13 you silently, you're all stupid, I'm stupid, the
14 judge is stupid. You know, what he told you,
15 baloney, nonsense, because he told you stuff he
16 didn't see and I hope you refer -- I will read from
17 the minutes and all to show you how ridiculous.
18 Let's go through it.

19 He tells us he was an unarmed guard; that
20 night he was assigned to the ticket booth. He tells
21 you that night there were ten guards on duty of which
22 eight were armed, two were unarmed. He told you
23 later on parenthetically that all eight who were
24 armed were off-duty or moonlighting correction
25 officers. He tells you he sees the argument and, by

1 the way, let's you know. It makes it flow. It's
2 crystal clear by now, whatever occurs was two steps.
3 There is an argument at the concession stand that
4 results in the shootout in the theater. Easy. He
5 sees the concession stand argument, he told you. I
6 maintain he didn't, and you'll see why.

7 The D.A. elicits the race, and you know we
8 can't escape race in this case. Don't take anything
9 personally. The D.A. elicits the race of the guy who
10 got shot and his friend. I think we can now conclude
11 that it's Shaka, the deceased, and O'Brien. Oh,
12 yeah, they're black guys. Maybe coincidence, maybe
13 she was tired at that moment, we never hear a racial
14 description of the alleged perpetrator, but anything
15 I say obviously are in these minutes. She'll hate
16 me, but you can have them all read. It's in the
17 minutes. The D.A. doesn't elicit what the
18 perpetrator looks like, what racial composition.
19 Why? It will develop.

20 Anyway, I know I went after him concerning
21 the theater. How could you be sure this is the
22 theater? I thought you caught on by now. It didn't
23 matter. It's just that it was -- forgive me -- a
24 demonstration of what you're dealing with. You have
25 heard the book, the play, the movie, witness for the

1 prosecution. He was the puppet for the prosecution.
2 He came here ready, willing and able to say anything
3 he thought the prosecution needed to be said.

4 Anyway, this is absolutely the theater.
5 Folks, I was there a number of times to prepare.
6 That is the theater. That's not the point. I don't
7 dispute the pictures, but why say that it definitely
8 is?

9 He tells you, I had to ask him, he tells
10 you he hasn't been there in a gazillion years, but I
11 know that's the theater. Anyway, he tells you there
12 is the argument and that Greg Jones intervenes.
13 That's another problem here. We cannot say with
14 certainty, but think about it, Greg Jones -- this all
15 occurs pretty fast. It's obvious confrontation to
16 shooting is pretty fast. And what do you hear down
17 the road -- and I will mention it later -- Greg Jones
18 was on parking lot patrol. Greg Jones, I submit to
19 you, never was in the lobby for the argument. He
20 comes after the radio call, but, anyway, no, that's
21 what she wants to hear, I'll say it.

22 So, Greg Jones intervenes, Jonesy. He was
23 the boss. Next thing I hear, because now they walk
24 towards me -- how convenient -- I hear the perp say,
25 as he puts it, in his parting shots to those guys and

1 to security, and says, I'm leaving for a gun, I'm
2 going out to get my gun. And then he tells you the
3 guards now are like in a huddle, so to speak. We are
4 all talking about that guy going for a gun. We are
5 all talking, the guards, we are all talking about
6 that guy going for his gun.

7 Now, you have, by his own testimony, eight
8 armed off-duty correction officers. Give me a
9 moment. And you know it's coming. Nobody gets the
10 brainstorm, because it's baloney, let's watch this
11 guy, let's follow him at a distance.

12 At Page 158, "So, now there is an obvious
13 argument. One of the parties to the argument is
14 saying I'm going for my gun and you're telling us
15 none of the armed security people either followed him
16 or kept an eye for his return; is that correct?

17 "Yeah, that's correct."

18 The next thing, now we are starting like,
19 you know, stage two, next thing he tells you he hears
20 is pop, pop, pop, and a lady runs out of the theater
21 saying, "There's a guy shooting in there." And this
22 becomes pivotal. Let's pause here. Why say he's
23 full of baloney? You recall he says the guy running
24 out was a dark-skinned, male black, but now he's in
25 court and sitting between suit number one and suit

1 number two is Jimenez. Well, I don't think Bruno I'm
2 going to identify. I'm not going to identify Brian.
3 Yeah, the guy was a light-skinned guy, you know,
4 complexion like mine was his quote. You know where
5 I'm going.

6 He is a fair-complexioned Latino. So is
7 Jimenez. You got to now put Jimenez at the scene of
8 the crime. You got to get around the fact that you
9 said that night it's a dark-complexioned black guy.

10 Folks, I'll use the term repeatedly. It
11 was a no brainer. Who are you going to describe when
12 you're staring at Jimenez? Who are you going to
13 describe from the stand?

14 Let's get back on track. He tells you the
15 guy running out is about six one, you know,
16 light-skinned like me, and he tells you, trivia but
17 absurd, and he's still holding the gun at shoulder
18 height. Let's go back to the absurdity of this
19 racial issue in identifying the defendant.

20 But, now, the D.A. never asked you what
21 was the apparent race or ethnicity of the taller,
22 slimmer guy?

23 "ANSWER:" -- I love it -- "I assumed he
24 was my complexion. I assumed he was black, a
25 light-skinned black person.

1 "QUESTION: I see. Are you telling us
2 you're black?

3 "No, no. I'm Spanish. But from afar I
4 assumed he was black.

5 "QUESTION: Well, now, it was towards the
6 end of your testimony you even -- you stated
7 referring to what would be the slender guy with the
8 girl, you stated, you know, light skinned like me.
9 So I don't understand. If the man is complexioned
10 like you and you acknowledge you're Latino or
11 whatever term you want to use?

12 "Yes.

13 "Light skinned like me, and you
14 acknowledge you're a Latino, but then you told us the
15 tall, slim guy has your complexion, so, therefore, I
16 assume he's black. I'm confused.

17 "WITNESS: Does he want me to answer why I
18 think the guy was black?

19 "Yeah.

20 "ANSWER: I just took it for granted.
21 Black guys were arguing at the concession stand."

22 I read that at length for a reason. I
23 don't mean to bore you. Think of the absurdity. I'm
24 quite candidly pointing out the ridiculousness of his
25 position. How does he try to get out of it? Yes,

1 since I already described that the other parties were
2 black, I guess black people fought with black people.

3 That's great reasoning. That really goes
4 over big. I don't want to the belabor it. He tells
5 the detective -- I have a note on that -- he tells
6 the detective that night it was a male black guy,
7 dark complexion, male black guy.

8 What he said -- I was going to comment
9 parenthetically, it's trivia -- but he did it and so
10 did one or two others -- "Do you recall discussing
11 this, being interviewed by a Detective Serrano that
12 night?

13 "No, I don't recall detectives' names."

14 Folks, if you doubt it, get the minutes.

15 Son of a gun, Ms. Mattaway gets up on
16 redirect, Detective Serrano, Detective Serrano, he
17 places Detective Serrano when the People question
18 him. Trivia, but it shows the mind set. Puppet for
19 the prosecution.

20 She's going to ask you to convict based
21 upon that clown. The movie was Batman. It wasn't
22 Bozo.

23 Furthermore, I confront him, so to speak,
24 saying in effect, You never reported you were present
25 for the argument at all. Your first involvement was

1 when somebody runs from the theater.

2 No, no, no.

3 Let's go to that absurd justification that
4 he gives.

5 "QUESTION: Eighteen years ago within
6 hours of the shooting as a security guard on duty
7 would you not have reported that to the investigating
8 cop, that I saw what lead up to this?

9 "ANSWER: I wasn't asked. They didn't ask
10 me about it."

11 Oh. So, in other words, the cops had to
12 ask were you standing at the concession stand or at
13 the ticket booth, did you witness this at all. Let's
14 develop that. On redirect, and it's not mocking the
15 A.D.A., but on redirect a series of questions were
16 asked then, well, you know, now he's in the corner
17 again, the puppet for the prosecution, right now he's
18 in the corner again.

19 How do you justify this? Well, I didn't
20 have good training as a security guard. I wasn't in
21 guard mode. I see. That justifies that. So, again,
22 folks, not facetiously, not sarcastically, common
23 sense.

24 If, God forbid, it was any of you, not
25 even as a guard, you were there to see the movie,

1 heaven forbid the cops come, it's obviously an
2 argument related to the shooting, you're just going
3 to tell the part about seeing the male black running
4 out of the theater? You're not going to volunteer,
5 you know, these two guys were arguing earlier and
6 that lead to the shooting? No. That's his
7 justification: They didn't ask me. I wasn't in
8 guard mode. He was poorly trained. No. Common
9 sense would have dictated. He was never there to
10 observe the argument.

11 By the way, you may recollect -- I will
12 get to it, of course -- Serrano tells you that is the
13 substance of the interview. His involvement starts
14 when the guy runs out of the theater. Enough said.

15 Why did he show up? Why did he testify?
16 Why did he resurrect 17 years later? The only
17 thought I can give, because they are relishing it
18 here, Andy Warhol said, "Each of us will have 15
19 minutes of fame." He sat here and did his Bozo the
20 Clown routine for about an hour, never mind 15
21 minutes.

22 The next witness was Andrew O'Brien.
23 Let's start here. You really think his name is
24 O'Brien? He's in the witness protection program now
25 for 12 years. So, anyway, Andrew X testifies. He

1 tells you that in October of '90 he commits a murder
2 that's related to a drug racketeering crime. He has
3 apparently done 12 of those 30 years. He tells you,
4 I have 18 more to go, and I elicited -- for some
5 reason it was a secret -- he got 30 years for
6 cooperating. Facing life, he got 30 years. All
7 right? And he tells you on the night in question,
8 four of these friends are together: Shaka, the
9 deceased; Smiles, which is Dean; Patchy, which is
10 Earl, and O'Brien. And he tells you that that night
11 they all arrived armed. They all had guns. Well,
12 why? Well, you know, in those days we ran the
13 streets. We were selling drugs. We always carried.

14 And he tells you that upon arrival, they
15 all exit the cars armed; however, he alleges -- I'm
16 going to get to that in a moment -- because he has a
17 thin T-shirt, because it's a breezy day, rather than
18 have the gun observed, he leaves his in the car, he
19 says. It's trivia. I maintain he didn't. I'll get
20 to that.

21 Anyway, he tells you they go in the
22 theater and, as he puts it, he's the guy with the
23 mouth. He says there is some confrontation with this
24 other guy and that he, O'Brien, takes up the
25 gauntlet, takes up the argument.

1 Let's stop here. What I'm saying about
2 the gun, at this point it becomes trivia because at
3 least three of these other guys had guns. Common
4 sense, do you believe this guy had no gun, meaning
5 O'Brien? Think about it. Of all the people with the
6 mouth like of his crowd, he's the one who is taking
7 on the guy. He's the one putting his chest out for a
8 fight. He's the one -- pardon the Latin -- who calls
9 the guy a pussy. He's going to do that with no gun
10 on him?

11 At this point, I can't pass up a tiny bit
12 of comic relief at this moment. Of all people,
13 O'Brien tells us, oh, those movies all look the same.
14 Touche, Centeno, touche. All right.

15 So, he calls the guy that vulgar name.
16 He, the guy, in effect, in effect, says, I'm going
17 for my gun. And what does O'Brien tell you? I'm
18 thinking that's fine. We're ready. Why are you
19 ready, sir? Well, there is four of us against one,
20 and we are strapped, which, again, like got by on
21 direct. I elicited that.

22 What is strapped? Like the cowboys, they
23 are carrying guns. They strapped their six shooters
24 on. They are all strapped or three are strapped,
25 according to him.

1 Anyway, they go and sit in the theater.
2 He, O'Brien, sits with the deceased, Shaka. The
3 other two, Patchy and Smiles, are sitting right
4 behind them. They are two and two.

5 As a bit of trivia, he forgets the fact
6 that they are there with a couple of girlfriends, but
7 I guess the girls were expendable. They just left
8 them there.

9 Anyway, the next event was Patches or
10 Smiles, he's not sure, spots, as he puts it, spots
11 that same dude coming into the theater. And what
12 happens? They say that the perpetrator, and, by the
13 way, ultimately he also identifies Jimenez sitting
14 here, we'll get to that, he says the perpetrator
15 comes down the aisle close to where they are and
16 says, you know, After the movie, it's me and you, and
17 he says the guy turns and walks away. Freeze that.

18 Now who is the aggressor? So, anyway,
19 that's not good enough. No. He says Patches gets up
20 and O'Brien gets up. I forgot the term he used.
21 That made me edgy. He was annoyed. He took umbrage.
22 He took offense. And he even says, O'Brien, he
23 pushes his way past Patches. He wants to have his
24 confrontation now. Now who is the aggressor?

25 You see, Folks, you're probably following

1 me. Already there is a common thread here, and I
2 will develop it as I go along.

3 Mr. Jimenez is not the perp. He wasn't
4 there, but, you know, this male black Jamaican
5 Rastafarian, when they find him some day, he's got a
6 great defense. They came after him with guns. Think
7 about it.

8 Anyway, there is this exchange. It's all
9 milliseconds. You got a gun, they claim the perp
10 says. He says he's got a gun. Now Patches is
11 prepared. By the way, at this point Shaka is now
12 making his way up the aisle. He's already in the
13 aisle, according to O'Brien's testimony. It's all
14 there. It's in the minutes. And then something
15 interesting happens.

16 Again, I don't mean to sound like too
17 heavy, but it's the old Freudian slip. What does
18 O'Brien then testify? Quote, so, anyway -- Page 202
19 -- "So, anyway, when I say, 'Yo, he got a gun, he got
20 a gun,' and the next thing you know the shooting just
21 -- they started shooting." Pause. "He just started
22 shooting."

23 (Continued on the next page.)
24
25

Summations-Bruno

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1 MR. BRUNO: The hold slip. They started
2 shooting. Then he corrects himself. And thank
3 God Ms. Mercorella here was sharp. She got that.
4 She got that. Some reporters may have missed it.
5 "They started shooting. He just started shooting.
6 Oh, and I felt like I got hit or grazed."
7 Inadvertently Shaka shot him. Think about it.
8 This is a subject I want you to address. Who
9 really did the shooting? The front, the back.
10 Think about it.

11 By the way, a few lines later we have 207.
12 "I said yo he got a gun and Patchy went to reach
13 in his waist for whatever." Not whatever. It's a
14 gun. "For whatever and that's when all the
15 shooting just happened, just started."

16 When they find that dark male Black, I want
17 to be his lawyer. He's got a great defense. And
18 again they just poor scared sheep. They are
19 petrified by this so much so after being grazed in
20 his side and his arm, after leaving their dead
21 friend behind by the way with a couple of girls.
22 But they were expendable. They chased the perp
23 and Patchy had his gun out and they are saying to
24 each other let's go get this guy. And again
25 everybody alluded to it's already crystal clear, I

Summations-Bruno

672

1 hope it's crystal clear toward the end of direct.
2 Can you identify that person in the shooting that
3 night and he identified Mr. Jimenez. I don't want
4 to belabor it. He's sitting there between the
5 book end. Who are you going to identify? He
6 tells you the first time I see the guy is that
7 night. The next time is today. Who is he going
8 to identify? More interesting developments,
9 however, with Mr. O'Brien or whatever his name is.
10 He tells us that in 1996 he tells the feds about
11 this as part of a cooperation agreement. He tells
12 us that. Yeah, I'm cynical. Let me develop this.
13 And then he says in '98 quite candidly, if we
14 believe straight forward it was '99, but in '98
15 Detective Pheifer the cold case lady detective
16 from the Brooklyn branch, she receives the
17 information from the feds. You notice this cold
18 case stuff how it just breezes right along. You
19 get stuff in '96. The city picks it up in '98.
20 What are you doing in the mean time any way? In
21 '01 Stradford gets around to it. He follows up on
22 it. What I'm alluding to is very interesting and
23 I don't know, it's a loose end, but it's food for
24 thought. Think about it. Detective Pheifer is
25 described in so many words as the cold case

Summations-Bruno

673

1 detective from the Brooklyn office. And what did
2 I ask O'Brien about? It's in the record. Are you
3 aware -- did you really get involved as part of
4 the cooperation agreement or were you dragged in
5 as the prime suspect in this murder? And what do
6 I base that on?

7 Well, are you aware of a memo from Detective
8 Dave Carbone out of the Brooklyn office which says
9 in substance we're going to charge O'Brien with
10 murder one of which is ours and the ours is
11 referenced Shawn Worrell, Whitestone cinema. Was
12 O'Brien dragged in as the perp? Brooklyn office,
13 Pheifer, food for thought. And you know he is a
14 real scary guy quite candidly. It certainly
15 wasn't personal offense at all. I relish what he
16 said, where have you been -- meaning me. I'm out
17 of the loop. When you're saying I'm going for it,
18 you ain't going to the car for brass knuckles.
19 There is going to be a shoot out. I want to be
20 the lawyer when they get that dark skinned Black
21 guy. They are there ready for a shoot out.
22 Parenthetically because again it got by the
23 prosecution. This is a man who came to this case,
24 forget the conspiracy, forget that he's doing
25 thirty years. Before this all occurs in March '88

Summations-Bruno

674

1 he's got a felony gun conviction in Brooklyn that
2 he's warranted on that night by the way. And in
3 '89 in Virginia he's like a multi state guy. He's
4 very cosmopolitan. In '89 he's got a Virginia
5 conviction for felony cocaine trafficking.

6 The next witness was Police Officer Rubeun
7 Velasquez. He was the young fellow that night on
8 the job maybe a year and three or four months.
9 He's now on the job what nineteen years. Again I
10 already tipped my hand. You know, he testified
11 the same day. I'm gonna keep it close to the
12 vest. I'm not gonna give you anything you want to
13 hear. Let's develop that. He tells us, however,
14 he hears approximately three shots. He tells us
15 grudgingly yeah the deceased had a weapon in his
16 hands when I discovered the body. He won't
17 acknowledge. Think back to what's in the minutes.
18 He's telling you that the victim, that Shaka is
19 right alongside his aisle when this happens.
20 Again, I don't think if you care if you're a cop
21 twelve minutes or if you're a local McDonald's
22 clerk you're gonna notice that the guy next to you
23 is shooting. No, am I being dumb? When I find
24 the body he had a gun in his hands, but I didn't
25 notice that he had a weapon drawn during this.

Summations-Bruno

675

1 Again it's just annoying. He tells us he came
2 here prepared. He had reviewed the DA's material.
3 It's not improper to refresh your memory. I then
4 give him documents to refresh his memory. He
5 never would acknowledge things.

6 Well, according to that statement yeah it
7 says that the guy had the gun in his right hand
8 with the finger in the trigger guard ready to go.
9 That's according to the statement. With all this
10 refreshing my recollection, I don't recall but
11 yeah now that you shove the statement in my hands
12 that's what the statement said. What kind of cop
13 testimony is that? You're a veteran cop. That's
14 what you said that night. Fess up, be a big boy.
15 No, I can't recall that the deceased had a gun
16 during the shootout. And the same thing, I won't
17 belabor it, that was his service weapon. Or the
18 guns, you're gonna recall it wasn't something like
19 esoteric Swiss automatic, they are floating
20 around. No, Smith and Wesson model 10, four inch.
21 It was the twin for the gun he carried. He was so
22 proud that he recall he made the distinction he
23 had the stainless. At the time he made forty-two
24 dollars more and got the stainless version as
25 opposed to the blue. That's all it came down to.

Summations-Bruno

676

1 That's it. Enough said. But in any event, we got
2 him pinned down. He recovered the gun from the
3 dead guy's hands loaded with three rounds, one
4 spent finger on the trigger guard. It was like a
5 dentist pulling teeth, but we got that out of him.

6 The next witness was Detective Wendell
7 Stradford. It should have been me and him after
8 the trial. What a piece of work. What a piece of
9 work. He's the cold case detective. He tells us
10 he's assigned in '99. He gets contacted by the
11 person in the Brooklyn who was Pheifer and they
12 had the lead. He first meets with O'Brien in
13 January of '01 then we get the following
14 nonesense. I couldn't reach out to the initial
15 assigned Detective Serrano. He had since retired.
16 I pressed him on cross. Well, I eventually
17 located him. Okay. He didn't bother reaching out
18 to Velazquez. This is this veteran cold case guy.
19 He's very impressed by himself. There is a T.V.
20 show. Now, he's hot stuff. I had no contact with
21 these witnesses until '05, '06. And what was his
22 trademark expression, I'm not gonna get personal.
23 You could laugh at me in the juryroom.
24 "Counselor, you're not understanding me. You're
25 not understanding me." Let's give a prime example

Summations-Bruno

677

1 what I the dopey lawyer didn't understand. I
2 asked him pages and pages of the same thing.
3 Bottom line, how did you get to O'Brien. Oh
4 you're not understanding. Let's see in a nutshell
5 after pages and pages of questions how he got to
6 O'Brien. Let's outline that.

7 "QUESTION: I think you said a lady
8 Detective Pheifer put onto the DEA drug
9 enforcement put you on to the DEA who then put you
10 onto O'Brien; is that correct?

11 "ANSWER: Yes."

12 That was after about 15 or 20 questions. Get
13 to the punch line. This wasn't because of your
14 massive investigation. You didn't beat the
15 pavement. You didn't wear out the soles of your
16 shoe Dick Tracy. Pheifer called you, hook up with
17 this fed, the feds hook up with O'Brien, end of
18 story. No heaven forbid he'd help the bad guy,
19 no. Gotta pull teeth. Another gem the .45
20 caliber shell. It wasn't lost. It can't be
21 located. What does that mean?

22 Well, I checked with the Bronx property
23 clerk, the Queens people headquarters and I never
24 got to see it. That was his thing on direct.
25 Then I asked him -- I'm a very direct guy, you

Summations-Bruno

678

1 know, was it lost. No, no, no, it wasn't lost.
2 It never got located. Did you locate it for the
3 trial? No, it's still unlocated. See, I admit
4 this is trivia, but again it goes to show you what
5 are they hiding. Are they trying to build a case
6 on quicksand and they are singing so they need
7 guys like Stradford to be evasive, to be arrogant?
8 To show the real game, the perp is described
9 repeatedly male Black okay, sometimes Jamaican.
10 He couldn't acknowledge that without squeezing it
11 out of him. So this is a quote. Well, I asked
12 him about you said you had reviewed the whole
13 folder from '89. Oh yeah. I couldn't conclude
14 based upon descriptions in that folder what was
15 the race of the person sought. I wasn't there. I
16 see, that has all kinds of meaning.

17 In other words, only a cop who was there for
18 the shooting could conclude the race, no. What's
19 the other interpretation? I see all the cops then
20 Serrano, Horn, Schiffman, if they put that down we
21 can't trust that.

22 In other words, they might have said the perp
23 was a short Chinese guy, but they wanted to write
24 down dark complexion Black guy. That's what it
25 means, okay. After I pressed him pages of

Summations-Bruno

679

1 questions, after I press him he says grudgingly
2 yeah the description that was given was for a male
3 Black.

4 Well, thank you sir. You're on my Christmas
5 list. Evasive obstructionist person. I elicited
6 that the last DD-5 generated in this case was
7 number 40 which was closed out on July 17th, '89,
8 two weeks after this incident. I maintain they
9 closed shop on this case. He tries to dance
10 around well they were like scraps of paper and
11 memos. Did you hear of anybody getting contacted
12 after the 17th of '89? I didn't. Again I pulled
13 out of him that Blaylock admitted to me he lied in
14 1989. He then danced around that issue with me.
15 I quote -- cross examined him from the minutes of
16 the prior proceeding in which he acknowledges that
17 and what does he do. Do you remember it was
18 great-- nothing personal.

19 Well, you know, but if you have that DD-5
20 that I'm relying upon give me my DD-5, I had to
21 give him his DD-5 if he acknowledges he said that
22 in the minutes. It's absurd. This is what they
23 are building their case on. It's bad enough if
24 laymen come in and try to make a fool of you.
25 We've got cops playing mind games. It's

Summations-Bruno

680

1 outrageous trivia, but it shows the mentality.
2 You surmised they arrest Jimenez in the barber
3 shop in which he's working. They arrest him in
4 the barber shop. We're gonna split hairs. It
5 wasn't a barber shop. Was it on the sidewalk in
6 front of the front door? No. Was it a barber
7 shop he worked in? You gotta paint a picture.
8 He's some sort of homeless bum. The guy doesn't
9 work. You know what makes a liar out of him and
10 it's in the minutes? Morrissey tells you. He had
11 to go to his job at the prison barber shop. He
12 used his skills while in the barber shop. Paint
13 the picture. I arrested this worthless bum who
14 doesn't work. They are so desperate in this case.
15 They are on quicksand and they are nervous. On
16 redirect-- and this yeah this on a personal level
17 was like bad faith I thought. On redirect there
18 is a series of questions.

19 Now, when you went out, you meaning
20 Stradford, were you seeking a male Black? That
21 was ambiguous. And he goes with ambiguity, no,
22 no. Why Folks? Let's cut it to the chase. He's
23 not investigating in the traditional way. He
24 rounds up a couple of people from '89 and at that
25 point they already have targeted Jimenez. The

Summations-Bruno

681

1 description didn't matter. You could have said he
2 was a male orange person. He knew he was going to
3 that barber shop for that guy. So literally was
4 he looking for a male Black? No. But it
5 backfires because literally he was going for
6 Jimenez. Is that a male Black? His final
7 desperate attempt also to show the mind games that
8 were played. This is by a cop, a veteran cop sir,
9 the amo on the voucher was it all .38 special?
10 Meaning to fit the gun.

11 Well, the first item yes. The first item was
12 super. It was the second or third item it was a
13 .38 super. Well, Officer, again you carried that
14 gun that super, a .38 special super velocity?
15 What's the answer? Oh, I wouldn't know that. I'm
16 not a ballistic's expert. I'm not the dope. The
17 joke is on him. That was his service weapon.

18 And then finally about ballistics. For some
19 reason she asks him would a .45 fit a .38. What's
20 the answer? Oh, I wouldn't know. I'm not a
21 ballistic's expert. At this point folks I think
22 it's appropriate -- I'm not gonna discuss more
23 witnesses. I'm going to digress for a moment.
24 I'm going to talk ballistics. I make it clear not
25 as an expert, I'm not allowed to -- I'll just

Summations-Bruno

682

1 offend the judge. I can't testify as an expert so
2 I will discuss the facts in the case about guns
3 and amo and so on. A few straight thoughts we
4 have in this case .38 special three live rounds
5 one spent. Dead man's finger in the trigger
6 guard. We have recovered on the floor of the
7 theater a lead bullet consistent with the empty
8 shell in the .38 special. We have a spent .45
9 caliber shell consistent with another party with a
10 .45 weapon of some kind. I doubt it was a machine
11 gun. It would be too big. Most likely .45
12 caliber army type gun. What everybody glossed
13 over except the court officer Hazeley I'll get to
14 him. What everybody glossed over including crime
15 scene, there is a bullet hole in the rear wall by
16 the way with front and rear. Nobody got confused
17 in this case so I'm gonna call it screen and hall.
18 There is a bullet hole in the rear or hall side
19 wall. The side you come in. The side they claim
20 the perp was. Did he shoot over his shoulder?
21 No. Did he turn around and shot? No. There is a
22 bullet -- there was another bullet in that wall we
23 could safely conclude. That means we have four
24 rounds that were fired. Go over there in the
25 juryroom. You have justification for four

Summations-Bruno

683

1 different rounds that day. Okay. We have
2 O'Brien --

3 MS. MATTAWAY: I objecct to
4 justification.

5 THE COURT: Sustained.

6 MR. BRUNO: I'll change that term. You
7 could justify using the reasoning that there were
8 four different rounds fired that day. We have
9 O'Brien grazed by someone. We have O'Brien tell
10 us that at least three of his party were armed.
11 Like the other guy Patches had a nine millimeter.
12 He was ahead of the cops. He was ahead of his
13 time. We have the deceased and Patchy both had
14 guns and we have a statement by O'Brien that page
15 245 that Patchy was now at the top of the theater.
16 You heard like any movie there is a slope. The
17 screen is the bottom. The hallway is the top.
18 Patchy was at the top of the theater and reached
19 for his gun. You know what's ironic? And again
20 it's not personal attack. These witnesses bent
21 over backwards not to acknowledge that the dead
22 guy and his crew had guns. Think back. The judge
23 will tell you my opening, her opening are not
24 evidence. But far credible, the DA in her opening
25 in her opening madam prosecutor tells you the

Summations-Bruno

684

1 deceased drew a gun. The deceased fired a shot.
2 What were these cops hiding? Enough guns and ammo
3 for today. The next witness in order was
4 Detective Serrano -- withdrawn. Retired Detective
5 Serrano. I don't know what he would have been
6 looking in '89, but I submit to you today retired
7 on his pension 74 years old, he's got no axe to
8 grind. He came here and he testified to what he
9 testified to. I read my reports. This is what
10 was reported to me. End of story. Not saying
11 he's a good guy or a bad guy. Let's be modest.
12 He had the luxury of being candid. He didn't need
13 to be promoted to detective. One, he didn't need
14 to look for a raise. He owed the DA nothing.
15 What did he tell us? I already said 74 years old.
16 He was on the job 38 years. The day he went to
17 investigate this crime he was a cop 28 years and
18 four days. You think he botched up the
19 investigation? You think he wrote down dark
20 complexion male Black when they said the guy was
21 Japanese? I don't think so. He tells us he
22 reviewed the file, that the DA had proper, and you
23 know it was in front of him. I gave him six or
24 seven or eight exhibits to refresh his
25 recollection. What does he tell us to keep it

Summations-Bruno

685

1 very straight forward and perfectly interesting I
2 went by numbers. Number one, he tells us that the
3 voucher of Police Officer Velasquez included a .38
4 special. You heard about the gun included three
5 live one spent rounds.

6 Number two, he tells us that evening or
7 really that morning he authorizes what they call
8 the finest message switching system report. All
9 points bulletin. He authorizes that potential
10 perp we're looking for male Black dark skin.

11 Number three, he tells you he interviews Mike
12 Centeno. Remember Mike the puppet. He interviews
13 Mike. The first activity he's involved in he
14 hears three pops from the Batman movie and sees a
15 male Black flee the theater and tuck a gun in his
16 waistband. He goes on yes. He reported he was a
17 male Black of dark complexion.

18 Number four, he interviews James Williams
19 another concessionaire that night. He tells you
20 that two male Blacks with Rastaferian accents were
21 arguing.

22 Number five, he interviews Sean Bond another
23 popcorn seller. He tells it was two male
24 Jamaicans engaged in the argument.

25 Number six, he interviews Esco Blaylock that

Summations-Bruno

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1 same morning. He says it was a male Black --
2 excuse me, with a white hat who did this. He
3 interviews number seven Christopher Cordero. He
4 was the ticket taker that night. It was a male
5 Black medium complexion. He interviews number
6 eight Linda Salter, two different issues. (A) the
7 guys involved in the argument. We'll get to that
8 were two -- the guy involved in the argument was a
9 tall Jamaican and I know Ricardo Jimenez, reports
10 Salter. I know Ricardo. He was not the man
11 engaged in the argument that night. You know
12 parenthetically Stradford said he tracked down a
13 whole bunch of witnesses and he guesses why Linda
14 Salter wasn't brought in. Make a wild guess in
15 the juryroom. I know Jimenez. He wasn't the guy
16 in the argument. I guess Stradford couldn't pick
17 her up in Delaware. Anyway, number nine Robert
18 Kane another concessionaire that night. It was a
19 tall male Black. And again not personal attack,
20 but to show the desperation of the prosecution.
21 We gotta like claw our way out of the quicksand.
22 She gets up and her big thing well now Serrano in
23 reference to Ms. Salter she simply told you that
24 the guy or you said the guy you're describing was
25 not involved in the argument. You didn't say he

Summations-Bruno

687

1 wasn't the shooter. Okay.

2 Now, be facetious. What's the logical next
3 statement now? In other words, I misquoted
4 Serrano, so Salter says the guy arguing at the
5 popcorn stand was not Ricardo, I know him. Oh, so
6 in other words now, to make Linda Salter in error
7 it's clumsy to make her in error, the guys who
8 argue at the popcorn stand then the perpetrator
9 then hires an assassin to do the shooting in a
10 theater. You follow me, the big discrepancy she
11 found that Salter didn't say and the shooter
12 wasn't Ricardo.

13 Well, folks, it's her case, her burden.
14 Every other witness says the obvious. They argue
15 here the same guy in the argument is shooter and
16 dead guy. Kind of crude by the way I said it, but
17 that was a big discrepancy. The other big
18 discrepancy and I hope it wasn't intentionally
19 ambiguous was you heard -- when you heard from
20 Esco Blaylock. I'm forced to digress to him for a
21 minute. Blaylock testified in substance not one
22 but two different detectives interview him that
23 same morning. Both detectives are male Black dark
24 complexion. Then some days later we get on this
25 Leon story. What's the ambiguity they created

Summations-Bruno

688

1 with Serrano? Well, didn't say that Leon was a
2 male Black. No, didn't. He said the perp that
3 night the two detectives was a male Black.
4 Sometime later, I guess, Blaylock gets together
5 with the rest of the crew to hear about Jamaicans
6 and Rastaferians. Later he says well Leon is
7 really a Puerto Rican who can mimic Jamaicans.
8 Desparate desparate people trying to prove a case
9 as they drown in quicksand. The next witness was
10 senior court officer Harold Hazeley. One of the
11 colleagues of the officers present. At that time
12 he was a moonlighting correction officer. And
13 Hazeley was fairly brief, which I had already
14 alluded to with just about every other security
15 guy, they had observed the obvious, bullet hole in
16 the rear or. For whatever reason crime scene
17 didn't find that important. Maybe they lost it.
18 I don't know. He confirmed that the theater like
19 every theater is built on a slope. What's the
20 significance? There is testimony that the bullet
21 hole in that rear wall is somewhere nine to ten
22 feet up. Think about it. The shooter shooting
23 that bullet I submit to you is at the low end of
24 the theater, the screen end, shooting up over
25 compensating is the term they use. You over do

Summations-Bruno

689

1 it. The same way sometimes when you shoot down
2 hill. You hit the guy's shin instead of his
3 chest. And he tells you and I acknowledge we
4 can't pinpoint a time frame, but he tells you when
5 the radio call goes out in any event that there
6 was a shooting. Jones is on parking lot patrol.
7 Again, at least somewhat contrary to Centeno.

8 All right. I don't want to ignore her. The
9 sister of the deceased testified Lisa Worrell. I
10 have no comment. She unfortunately was here to
11 confirm the death of her brother that she knew him
12 alive and that she then had to identify him.

13 (Continued on the next page)

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1 MR. BRUNO: The next witness was Esco
2 Blaylock. He tells you a lot that we've heard
3 over and over again. There's an argument over
4 popcorn. He tells you he knew Leon from,
5 quote, "around the way," that people pointed
6 him out, they were never introduced.

7 He tells you about the line, go get
8 what you're going to get. He tells you about
9 the line, you're the one with the smart mouth
10 and words are exchanged. He tells us further
11 that the deceased, Shaka, he doesn't know it
12 was Shaka, the deceased goes into the aisle to
13 get into the confrontation as it were. He
14 tells us some double talk, I submit, about the
15 identification of Leon. Let's get to that.

16 "Question: And how long, if you
17 remember, did you stay in the theater that
18 evening talking to police?

19 "Answer: Well, I told them what had
20 happened, because I was waiting for my
21 girlfriend to get off anyway. So I told them
22 what I seen and they took down my statement.
23 They gave me their card and that was that.

24 "Question: And did you tell them
25 about Leon?

jc-c Summation - Defense

1 "Answer: Well, eventually they came
2 back at a later date."

3 I don't want to give Blaylock credit
4 for too much intelligence, but do you see how
5 sleek that was? I told them everything I seen,
6 but then again, perhaps the Freudian slip, I
7 tell them this Leon story at a later date. All
8 this about getting fired is also very
9 interesting. I'm told, don't talk, meaning
10 told by management, I'm told don't talk about
11 this, don't help the cops. He gets fired
12 anyway by the 17th. That's a pivotal date. He
13 said within two weeks. By July 17th, the date
14 of the last DD5, by July 17th, he's fired
15 anyway.

16 And he says interesting too, in other
17 words, about motive to lie, motive to change
18 the story, the timing is important, and then
19 I'll read it in a minute, he says he's
20 admonished by management right after the
21 incident, meaning July 3rd, the early hours of
22 the morning.

23 Let's look at this for a minute.

24 "Did there come a time when you
25 stopped talking to the police back in '89?

1 "Answer: Yes.

2 "Why did you stop talking to the
3 police?

4 "Answer: Because two reasons. My
5 employer, right after I gave my statement to
6 the police officers that night, they told
7 everyone not to cooperate, that they didn't see
8 anything."

9 So think about it. Right after being
10 interviewed that night. What does it mean? I
11 submit you shouldn't believe him, but if that
12 aspect is believable, that because I'm
13 threatened by management, I stop talking, the
14 threat, again, common sense, no magic, the
15 threat is, after he's told Serrano and another
16 detective, remember two different interviews
17 that morning, that it was the male black, think
18 about it, think about it, all this Leon story,
19 and I admit, we never pinned him down, was days
20 or weeks later. That morning, two statements,
21 both male black, two different detectives.

22 Just food for thought. He tells us
23 he was a Federal security officer at the
24 airport. He supposedly left the job alleging a
25 civil rights lawsuit. Just to pin him down,

1 especially after Officer Hazeley's testimony,
2 he says he never saw the perpetrator fire at
3 that back wall or over his shoulder obviously.
4 I think I already said it in the early morning
5 of July 3rd, he tells the detective who was a
6 male black, 5'10" to 6', 175 pounds, again, I
7 said about another with the parenthetically
8 happened, the same thing with him, maybe it was
9 part of the interview process, he couldn't
10 place Serrano any time I questioned him. The
11 DA does redirect, Serrano, Serrano, Serrano.
12 Interesting. All right.

13 With reference to management, because
14 it is significant, and, again, sincerely you're
15 the jury, I can't force my interpretation on
16 you, but he'll have you believe, and really
17 it's not a major point, he's already pinned
18 down with two statements on the 3rd, but he'll
19 have you believe, think about it, there's a
20 shoot out at a 12 movie multiplex, pretty major
21 movie in the Bronx, we all pass it on Bruckner.
22 There's a shoot out at a 12 movie multiplex on
23 Bruckner Boulevard, on opening night of Batman,
24 a lot of attention, again, you could surmise,
25 and the judge told you during voir dire, press

1 had to be swarming that night, so look over
2 your shoulders and he'll have you believe,
3 management says don't cooperate. They don't
4 want this solved? What I'm saying, my opinion
5 doesn't count, yours does. Think about it, as
6 management, don't you want to show the public
7 our theater is safe, you could come with your
8 family, there was this bizarre murder when
9 Batman opened, but come tomorrow with your
10 little kids when it's safe to see Batman. No,
11 they want it covered up, so we all say, gee, I
12 dread going to the Whitestone theater anymore,
13 they had a theater and nobody cared. Food for
14 thought. He was threatened by management and
15 got fired anyway.

16 By the way, it's in there, maybe it's
17 trivial, I'm glad I caught it. The DA asks him
18 all were warned, were others fired with you,
19 no. I submit to you he got fired for his own
20 personal reasons. And he vacillates on the
21 subject; I never stopped cooperating when they
22 called me, I made myself available, but then he
23 tells you sometime later, yeah, except that the
24 next call I received was from Stradford in
25 April of 2006. Again, all American horse

1 sense.

2 Do you think that with this murder,
3 with the press looking over your shoulder, the
4 cops just gave up on him? On 7/17/89, like put
5 it on a shelf until Stradford reached out to
6 him in April '06?

7 No, I submit to you he fell off the
8 face of the earth and didn't want to get
9 involved, didn't want to perpetrate a fib he
10 created, and I'll get to that at the end.

11 He tells us grudgingly that he does
12 have a DWI case, but, again, double talk and
13 triple talk. Doesn't get arrested, it's in
14 litigation. That makes no sense. Drunk
15 driving is very straightforward. You're
16 driving a car, the cop is alleging you're
17 drunk, drunk driving, not litigation. Either
18 you're stopped for it or you're not. He says I
19 was involved. Same thing; either you're the
20 driver or you're not. They don't lock up your
21 17 year old kid in the back seat if you're a
22 drunk. Either you did or didn't. And I'm not
23 charged yet. I don't know what that means,
24 you're charged at the scene. Sir, you're
25 arrested for drunk driving. They throw the

1 cuffs on you and you're thrown in the car.
2 That's the point. I don't care about drunk
3 driving quite candidly. It was significant, I
4 submit, that O'Brien is cutting a deal that
5 could maybe minimize the balance of 30. I
6 acknowledge, I submit to you that Morrissey
7 maybe has a motive to do one and a half instead
8 of three and a half. This kid, he's not going
9 to do 25 years for DWI. We all know that. I
10 didn't bring it up for that reason. I submit
11 to you, he was hiding and ducking the police.
12 How Stradford finally got his hands on him is
13 by tracking arrests. Putting like a hold on
14 the criminal record system. It was we finally
15 got him, they locked him up for DWI and go get
16 him, like enforcing a warrant. That was the
17 break, I submit to you. You know why I submit
18 that to you? I was forced to fish around, but,
19 again, 3, 4, 6 questions, when did you get
20 arrested for the DWI, I don't recall, I don't
21 recall. And then he kind of caught on where I
22 was going. So then what does he say, no, I do
23 know, it was like in August. He had to make it
24 after Stradford found him. Because, yeah, he
25 caught onto where I was going.

1 This thing with the girl, I submit
2 very important with the double talk and triple
3 talk and, again, at the risk of angering the
4 court reporters, they're taking the minutes
5 down for a reason. They're all available to be
6 read to you. You might want to have read back
7 to you at least this subject, because he goes
8 back and forth on the subject of the girlfriend
9 as follows: On cross I ask him pretty direct
10 when I question him, I ask him pretty directly,
11 did you say in effect the context, the way in
12 which you knew of Leon, which was that you
13 believed, turns out it was an error, that he
14 was going with your girl, and he says
15 definitively no, there was no girlfriend issue
16 when I question him. And he denies ever saying
17 that to Stradford, by the way.

18 Miss Mattaway gets up on redirect,
19 not improperly, and pursues this subject. All
20 of a sudden, there's a whole long story, well,
21 yeah, no, there was a girlfriend issue, you
22 know, but it doesn't refer to Lisa, Lisa was
23 the girlfriend who was popping corn with him.
24 But they're not referring to Lisa, it's not the
25 same girlfriend you thought you were dating in

1 common, no, no, no, they're discussing a
2 different girl. And then he tells you the
3 following, rather than read it, I summarized it
4 right here, it wasn't a girlfriend, per se, it
5 was, you know, a lady friend, a girlfriend, a
6 best friend. Folks, you figure that one out.
7 Not a girlfriend, per se, a lady friend, a
8 girlfriend, a best friend. I asked him about
9 did you lie to the police, again, pursuant to
10 what Stradford acknowledged, well, I could have
11 changed my story after the threats by
12 management, but it was too late, I already gave
13 my testimony, and I wasn't about to go back on
14 that. So those first two interviews, male
15 black, male black, no question. So which I
16 don't follow why this even came up, again, so
17 when did you decide to change your story, after
18 I was threatened by management and reinforced
19 by the parents.

20 My question is this, again, I think
21 ambiguity was thrown into this purposely. When
22 did you change your story? Change to what?
23 They'll have you believe maybe the change was
24 about how old he was, because I was only 15,
25 how old you were, was the change about the

1 color of the guy. They'll have you believe or
2 not believe rather, no, he changed the story to
3 this whole thing about Leon. Leon. Who, by
4 the way, we have Ricardo, maybe Ricky, where
5 Leon fits in, I don't know. Nowhere. Did you
6 change the story to Leon? Then he tells you,
7 well, I never said that Leon was the male black
8 5'10", 6'.

9 Ladies and gentlemen, why did Esco do
10 this? I can't speculate. I can propose to you
11 as follows: I submit to you, think about it in
12 that context, he's a 15 year old guy, hormones
13 raging, testosterone flowing, and pointed out
14 to him that guy, that older guy is stealing
15 your girl.

16 This was a little way to twist the
17 knife in his back. Never thinking it would get
18 to this point. Don't forget, after two weeks
19 he's out of this. He makes contact again in
20 front of Baruch in April '06. And now he's
21 trapped in this case years later.

22 One final witness, very brief, the
23 coroner, Dr. Susan Ely. Folks, I don't dispute
24 that this young man Shawn Worrell, Shaka, died
25 of two bullet wounds. It was a lousy death for

1 a young man. However, there still is that
2 issue lurking in my mind, I hope you adopt it,
3 who fired the shots who wounded him, one or
4 both. And in that context, hope it didn't get
5 by you what I think is one of the most
6 important points that the doctor makes is that
7 I normally can't testify or even speculate in
8 so many words on what shot is which, what went
9 first, meaning the one in the side and arm or
10 the one in the head. But because of the
11 nature, remember because of the nature of the
12 wounds, I can give you a pretty intelligent
13 summary. The wound in the side and the arm had
14 to be first. Why? Well, getting ahead,
15 because the head wound would instantly floor
16 you. You'd have no control of anything. Gets
17 very morbid, you just fall. But the shot on
18 the side in the arm, you have some time left as
19 it were.

20 Remember she did the example with the
21 broom stick and all? What am I getting at?
22 Sean Worrell gets shot first in the side,
23 because she says to you what, the arm had to be
24 somewhat straight out for the bullets to travel
25 the way they did. Straight out, gripping a 38

1 special. Fingering the trigger card.

2 Few comments and I sit down. This
3 has not become a game of who is a nice guy and
4 not. I know at times I'm extremely blunt, it's
5 not a personality contest, it's not who is
6 pretty, smart, whose voice is more fascinating.
7 It's the facts. And it's reasonable doubt.
8 You know, folks, quite candidly, any case I
9 tried, any case I've ever tried, and I'm doing
10 this for a couple of years now, any case I ever
11 tried, I could always have a verdict of he
12 might have done it, I got a 20 percent feeling
13 he did it, my gut is he did it. I don't like
14 his tattoo, he's a bum, he's not a barber. We
15 could convict on that, because we're human, but
16 that's not the job.

17 I don't mean to lecture to you.
18 What's pivotal here, listen to the judge's
19 charge about reasonable doubt. This case is
20 crying out reasonable doubt. Crying out. I
21 urge upon you, you cannot in good conscience
22 convict upon the liars, yeah, in this case, and
23 the evasive cops. What were they avoiding,
24 what were they covering up? Like why all this
25 evasiveness? Why? Why does Centeno come and

1 create a whole story? Why did Blaylock have to
2 try to obscure this feeling about he might have
3 stolen my girl, and I'm 15 years old, and he's
4 an older guy, he's got a lot of nerve. Motive
5 to lie, reasonable doubt. And, yeah, we can't
6 escape it for perhaps too many times. How do
7 you explain away eight different
8 identifications to Serrano? Eight. Male
9 black, male black, Jamaican, male black
10 Jamaican Rastafarian.

11 Folks, quite candidly, I always end
12 my summations in a criminal case the same way
13 and I share it with you now. You heard from
14 the get go, this case is called People of the
15 State of New York against Jimenez in this case,
16 People of the State. What does it mean?
17 Doesn't mean they're the good guys and we're
18 the bad guys. The People refer always to
19 exactly that. A crime occurs and it offends
20 all of the people because crime hurts us, hurts
21 our community. What's the point I'm making?
22 They're not just the people, the people, all of
23 you, the judge, me, everyone in the audience,
24 all of the People of the State of New York were
25 offended by a crime.

jc-c Summation - Defense

1 What's my last statement? Ricardo
2 Jimenez is one of those people. Give him a
3 fair and just verdict. Reasonable doubt. He
4 didn't do it. Find that dark, black, Jamaican
5 Rastafarian and then convict him. Find this
6 people innocent.

7 Thank you. Bless you.

8 THE COURT: Ladies and gentlemen,
9 we're going to take a very brief break. You
10 can stretch your legs. Do not discuss the case
11 amongst yourselves. We shouldn't be more than
12 a few minutes, I'll see you then.

13 (Jurors exited the courtroom.)

14 THE COURT: Counsel, step up for a
15 minute.

16 (Whereupon, there is a discussion
17 held off the record at the bench among the
18 Court, defense counsels and the assistant
19 district attorneys.)

20 THE COURT: Bring the jury back in
21 briefly, please.

22 THE COURT OFFICER: Jury entering.

23 (Jurors entered the courtroom.)

24 THE COURT: Ladies and gentlemen, it
25 would be impractical and probably really unfair

1 to you to try and push through People's
2 closing. Your lunch has been ordered as you
3 know. Although it probably will not be here
4 for another half hour or so, we're going to
5 stop until after you've had your lunch.

6 I remind you, do not discuss anything
7 about the case. As soon as you finish your
8 lunch, we will continue with the People's
9 closing and go straight into my final
10 instructions to you. Enjoy your lunch.

11 THE COURT OFFICER: Jurors, step this
12 way.

13 (Jurors exited the courtroom.)

14 THE COURT: Everybody back here at
15 2:15.

16 (Luncheon recess taken.)

17 A F T E R N O O N S E S S I O N:

18 THE COURT: On the record, everyone
19 is set to go?

20 MR. BRUNO: Yes, sir.

21 THE COURT: Jury in, please.

22 THE COURT OFFICER: Jury entering.

23 (Jurors entered the courtroom.)

24 THE COURT: Good afternoon. I hope
25 you enjoyed the lunch. We'll now proceed with

jc-c Summation - Defense

1 the summation.

2 Miss Mattaway?

3 MS. MATTAWAY: Thank you.

4 Good afternoon, ladies and gentlemen.
5 I'll be giving a power point presentation and I
6 hope that will help explain some of the
7 arguments I will be making.

8 This is the case of the People of the
9 State of New York versus Ricardo Jimenez, and
10 as Mr. Bruno told you, his client is one of the
11 people. Well, so are all of you, and up until
12 January 2nd -- withdrawn, July 2nd, 1989, so
13 was Sean Worrell.

14 July 3rd, 1989, you've all heard a
15 lot about this date. On this date, Batman was
16 playing at the Whitestone Movie Theatre.
17 Defense counsel said that I actually am
18 drowning in quicksand. Told you that before
19 the lunch break. He's got it wrong. If
20 there's anybody who's drowning in quicksand
21 right now, it's Ricardo Jimenez.

22 And what is quicksand, anyway?
23 Quicksand is when you're walking and you think
24 everything is fine, and suddenly the ground
25 gives way and you drown in it and you can't get

jc-c

Summation - People

1 out.

2 I submit that's exactly what happened
3 to Ricardo Jimenez, because he thought he got
4 away with this murder for 17 years. And
5 suddenly, I submit to you that on August 3rd,
6 2006, the ground gave way beneath his feet and
7 he was arrested by Detective Wendell Stradford.
8 Defense put forth a conspiracy theory this
9 morning. All of the People's witnesses,
10 they're liars, they're stupid, they're dumb.
11 He called Mike Centeno, an investment banker, a
12 bozo. How dare he? How dare he?

13 He said they were evasive, and then
14 he comes up with this fourth shot. You have
15 sat through five weeks of trial and not a
16 single witness has talked about a fourth shot.
17 Mr. Bruno came up with a fourth shot today.
18 Cooperation. They're all evasive.

19 Do you really think that when this
20 shooting happened at the Whitestone Movie
21 Theater, a theater packed with patrons, that
22 people were just jumping up and down begging to
23 be picked as witnesses to talk to the police
24 officer? You know that's not what happened.
25 You know there was pandemonium, and you heard

1 it from the People's witnesses, and people were
2 screaming and running like crazy. And I submit
3 to you, that it was not easy to find anybody
4 who was willing to cooperate. And then as you
5 later learned, the investigation did stall and
6 it stalled for quite a long time. And some
7 witnesses were contacted again after all these
8 years. And some of them took the stand and
9 testified for you in court here in 2007.

10 Do you think people really, really
11 want to come into court, disrupting their
12 lives, recalling an event from 17 years ago and
13 tell you about something they saw? You think
14 people want to be here any more than you want
15 to be here on jury duty?

16 My 1989 witnesses, who were they?
17 You heard from Esco, he came and made an
18 in-court ID of the defendant. Mike Centeno,
19 the bozo according to defense counsel. Officer
20 Ruben Velasquez. Mr. Bruno smeared him as bad
21 cop. I submit to you, back on that day in
22 1989, he was an off duty cop who was going to
23 see a movie with his fiance. Andrew O'Brien,
24 he also made an in-court ID of the defendant as
25 the shooter. Harold Hazeley, Detective

1 Serrano, Lisa Worrell. These were all people
2 involved back in the case in 1989 and they're
3 still here.

4 And defense counsel tried through
5 Detective Serrano to talk about a whole bunch
6 of people who didn't testify before you. Sean
7 Bond, Linda Salter, all of these people. Well,
8 you know something, they didn't testify, so you
9 can't consider that.

10 MR. BRUNO: Objection, your Honor.

11 THE COURT: I'll instruct the jury on
12 what they can and cannot consider.

13 Move on.

14 MS. MATTAWAY: Let's look at Linda
15 Salter. This mysterious woman who says if you
16 believe Detective Serrano testifying about a 17
17 year old DD5, a police report, she knew the
18 defendant, but he wasn't involved. Mr. Bruno
19 talked this morning about people with motives
20 and axes to grind.

21 Do you think maybe there could have
22 been a reason why Linda Salter didn't want to
23 name Jimenez as a person involved in this
24 incident? It's possible, right?

25 MR. BRUNO: Objection to what's

1 possible.

2 THE COURT: Sustained. Watch your
3 phraseology.

4 MS. MATTAWAY: Yes, sir.

5 Defense counsel called stuff like
6 this trivial. Do you remember. He kept
7 calling it trivial. Do you know what I call
8 it? Pea soup. We talked about this in voir
9 dire. It doesn't really matter, because in the
10 end, it's about who did the shooting, right,
11 and whether or not I prove the case beyond a
12 reasonable doubt. So do not get sidetracked by
13 the soup, by the flavor, it's about the
14 incident.

15 Who are my 2006 and 2007 witnesses?
16 We had Detective Stradford, Dr. Ely, Kevin
17 Morrissey, who also made an in-court ID of the
18 defendant. My case consisted of several
19 witnesses. Essentially they all revolved
20 around Esco Blaylock. He really is the
21 linchpin of the People's case, but part of what
22 you also need to consider in order to arrive at
23 your verdict has to include the evidence of the
24 body identification. You also heard about the
25 crime scene procedures that took place back in

1 1989. You heard from some of the witnesses who
2 were in the theater that night including Ruben
3 Velazquez and Andrew O'Brien, and of course
4 Esco Blaylock. You heard from Mike Centeno and
5 Harold Hazeley, the two security guards. You
6 heard about the arrest procedures and of course
7 you also heard about the admission defendant
8 made to Kevin Morrissey while in jail.

9 But what happened when I picked you?
10 We talked about being the kind of juror who
11 could put the puzzle pieces together to arrive
12 at what happened in this case. So you have to
13 figure out who is important to my verdict and
14 maybe who is not so important, and I submit to
15 you the key testimony to focus on is Esco
16 Blalock, Officer Velazquez, Andrew O'Brien, you
17 need the autopsy evidence, and I will address
18 it. You need to know a little bit about the
19 crime scene, because you may have questions
20 about these bullets. Finally, though, finally,
21 it's crucial in this case that the defendant
22 chose to confess his secrets to Kevin
23 Morrissey. And I will talk about him in a
24 little bit, but he is one of the pieces that
25 you can consider, and I urge you to consider.

1 Now, Mike Centeno testified Mr. Bruno
2 called him a bozo, but Mike Centeno, I submit
3 to you, was perfectly candid with you. He said
4 they don't pay me enough to chase guys with
5 guns. And when he saw the defendant leaving
6 the theater with the gun out, he told you he
7 saw him, but he ducked into theater two, but
8 what's his motive? Why would he lie? Why
9 would he come into court after 17 years and
10 point out the wrong guy? What's in it for him?
11 What is the deal he's making with the District
12 Attorney's office? What is he getting out of
13 it? Do you think Mike Centeno really wants to
14 send an innocent man or punish an innocent man?

15 I submit to you, he told you the
16 truth when he pointed out the defendant as the
17 person who he encountered running out of
18 theater one. You know something --

19 MR. BRUNO: Objection, your Honor.
20 There was no such identification.

21 THE COURT: Sustained.

22 MS. MATTAWAY: I suggest if you
23 really have a question about Mike Centeno and
24 what he said, you ask for his direct and his
25 cross, because it's all in the record. The

1 court reporters have been taking down the
2 testimony throughout the whole trial, and if
3 Mr. Bruno maybe mischaracterized something a
4 witness said or you think I mischaracterized
5 something, don't go by what we said, because
6 it's the record that you can consider.

7 Ruben Velasquez, he told you that he
8 saw the deceased pushing his way through him.
9 He was in the same aisle as the deceased. What
10 kind of view do you think he had?

11 He had a view to his side, the best
12 view was of the deceased, not to the back of
13 the theater. But he says he hears the
14 commotion and sees the two muzzle flashes, and
15 they come from the rear of the theater. Then
16 he sees Worrell's body face down in the aisle.

17 Why is this important? Because you
18 know something? I submit to you that whether
19 you're a cop or whether you're a civilian, the
20 very first muzzle flash, the very first one is
21 going to be the one that takes your attention.
22 Because nobody goes to a theater and suspects
23 there's going to be a shooting there.

24 So when the first shot rings out,
25 that's where your attention goes. So I submit

1 to you, he is one of the key witnesses for the
2 People's case, and you can rely on him, because
3 I submit to you, being in the exact same aisle
4 as the deceased, if the deceased had shot
5 first, Officer Velazquez would have told you
6 that.

7 If he saw a muzzle flash right in the
8 same row that he was, coming from near him and
9 then perhaps two subsequent muzzle flashes
10 answering from the back of the theater, he
11 would have told you that. But that's not what
12 he said he saw. He said he saw two muzzle
13 flashes from the back of the theater. And I
14 submit to you, whether you find Sean Worrell
15 did return fire to the first muzzle flash or
16 not, and that's for you to find or not find, it
17 doesn't really matter, because the first shot
18 came from Mr. Jimenez. And Officer Velazquez
19 told you that.

20 Harold Hazeley, he testified he was
21 also in the Whitestone Theater that evening and
22 he marked a single bullet hole on the rear
23 wall.

24 Why is that important? That's
25 important because as defense counsel reminds

jc-c

Summation - People

1 you, I opened in this case and I told you it is
2 the People's position, even though I was not
3 there, you weren't there, I believe, I submit,
4 I think Sean Worrell did fire a shot. I think
5 he fired that shot. I just don't think he
6 fired first and that's why we're here.

7 But Harold Hazeley marked the place
8 where he found a single bullet hole on the rear
9 wall of the theater. The L next to it is taken
10 directly from the exhibit that's in evidence, I
11 submit to you, and that is the L marked by Esco
12 Blaylock. Harold Hazeley didn't make that L,
13 Esco Blaylock made that L and he made it in
14 court to you.

15 (Transcript continued on next page.)

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1 MS. MATTAWAY: That bullet hole is in, I
2 submit, the approximate general direction of where
3 the defendant was standing when he shot that night.
4 The trouble is Sean Worrell didn't hit him. He
5 missed. So, I'm not going to stand here and say the
6 deceased didn't have a gun, the deceased didn't fire,
7 but you know something, the deceased isn't on trial.
8 He is. He's the killer.

9 Deceased's friends, defense counsel
10 smeared them. They are a bunch of thugs leaving
11 their girlfriends behind running from the theater.
12 You know something, these people laughed off the
13 threat at the popcorn stand. They didn't believe it,
14 and you know how we can accept that? Because Mike
15 Centeno didn't believe it either. He's not with
16 them. He heard the threat. And the security guards,
17 they didn't follow him out to the car; and whether or
18 not you think that was negligence on their part or
19 something, you know something, that's not the trial.
20 This is a murder trial. Keep your eye on the ball.
21 It's about shooting Sean Worrell. Who did it? He
22 did it. That's the People's case.

23 However, these friends hadn't just been
24 dissed by a girl. These friends had safety in
25 numbers. You heard Andrew O'Brien tell you. There

1 was four of us, one of him. They laughed it off, and
2 what did they do? When they got into words at the
3 popcorn counter, does it really matter if Andrew
4 O'Brien is the big mouth or Sean Worrell was the big
5 mouth? It's pea soup. That's what it is. It's pea
6 soup. What did they do? They went in the theater.
7 They didn't go out to the parking lot and follow this
8 guy. They didn't take him seriously. They were all
9 strapped, according to Mr. Bruno, although Andrew
10 O'Brien --

11 MR. BRUNO: Objection. A fact in
12 evidence.

13 THE COURT: Sustained.

14 MS. MATTAWAY: As I was about to say,
15 although Andrew O'Brien told he you he didn't take
16 his gun because he had a thin T-shirt and he didn't
17 want the bulge to show. I submit, he was being
18 honest with you about that. So, in any event,
19 though, there is four people with two girls, right?
20 They come up from Brooklyn to go see Batman. They
21 don't know people in the Bronx. They're there.
22 They're out not to look for trouble; they are out to
23 go see a movie.

24 MR. BRUNO: Objection as to what they are
25 looking for.

1 THE COURT: Sustained.

2 MS. MATTAWAY: Well, what did they do when
3 there was a threat at the popcorn stand made by the
4 defendant, I'm going to go get my gun? Now, we heard
5 different variations of the same answer, words, but
6 they were all, "You got to do what you got to do" or
7 "Get what you're going to get," words like that.

8 What didn't they do? Did they go out to
9 the parking lot? No. Did they send maybe some of
10 their group into the theater and one or two of them
11 stand in the lobby, standing guard in case the guy
12 came back? No. Did they position any of their group
13 at the front entrance of Theater 1, the theater they
14 knew they were in in case the guy came back? No.
15 They didn't do any of that, did they? They took
16 maybe popcorn and went to a movie and, I submit to
17 you, they had no idea what was coming, because if
18 they did, they were certainly in a position to do
19 something about it.

20 They had weapons. They had numbers. And,
21 I submit to you, they had a certain amount of street
22 smarts that if they thought there was a real threat,
23 they would have taken care of it or escalated it or
24 gone after him, but they didn't do that. They were
25 not looking for trouble. Again, I submit, in fact,

1 they were hunted down, and how do we know they were
2 hunted down? Because who came after whom? It is the
3 defendant who came back in to take on this group, and
4 you know something, think about it from the
5 defendant's point of view for a moment. What was he
6 going to do? He's taller than them. He's there with
7 a girl. He gets into words with them. He tries to
8 cut the line. He's from the neighborhood.

9 MR. BRUNO: Objection as to where he's
10 from. A fact not in evidence.

11 THE COURT: Sustained.

12 MS. MATTAWAY: He puts the threat out
13 because, you see, he knows he has a gun, but he
14 doesn't know they have guns. So, it's not an idle
15 threat on his part, is it? He knows he's armed.
16 It's in his car, but he knows he has a gun. He says,
17 I'm going to go get my gun, and he actually has a gun
18 to go get, but he doesn't know what they have or
19 doesn't know -- for all he knows, this is a bunch of
20 people he's starting up with, but he's the big man.
21 He can take on four people because he doesn't know
22 they have weapons, and I submit to you, that's how,
23 in a way, you can kind of believe the deceased's
24 friends through Andrew O'Brien's story because if you
25 think about it, if three of the four of them have

1 guns, why didn't they show them at the popcorn line?
2 Why didn't they say, We're strapped, to the guy who
3 made the threat, and the answer is, I submit to you,
4 because they didn't believe him. And, in fact, I
5 submit, it's in the record, that Andrew O'Brien said
6 they were saying -- I believe it was Shaka actually
7 who said, He's bluffing. He's bluffing. They didn't
8 believe it. They didn't shoot at him, even though
9 they were strapped, did they?

10 Now, counsel tried to argue to you
11 something about Patchy with his 9 millimeter. Patchy
12 didn't shoot. I submit to you you know Patchy didn't
13 shoot.

14 Now I've lost my signal. I don't know
15 why. I don't know why. Sorry. One moment, please.

16 (Brief pause in the proceedings.)

17 MS. MATTAWAY: I apologize.

18 (Brief pause in the proceedings.)

19 MS. MATTAWAY: I apologize for that. I
20 will continue. All right.

21 I was talking about the deceased's
22 friends. What they don't do, I submit to you that
23 they actually showed an incredible amount of
24 restraint in this case, because if they were strapped
25 and once the shooting started, and again we know from

1 Ruben Velazquez that the shooting started with the
2 defendant, why didn't they answer fire? And I submit
3 to you that it's because it happened too fast. I
4 submit to you they did not perceive what was
5 happening, the horror of what was happening, and,
6 unfortunately, there really wasn't anything they
7 could do at that point because you see the theater
8 erupt in pandemonium and everybody is running and
9 what are these guys supposed to do, because there is
10 only one specific guy they want to get. They want to
11 get the shooter who shot their friend, but he has
12 run. People are screaming, running. I submit to
13 you, it's pandemonium. What are they going to do?

14 Now, in fact, Andrew O'Brien told you that
15 they even talked about this or he had words with
16 Patchy, I believe, or with Smiles, I don't remember,
17 we should go chase the guy, but they decided not to,
18 and one of the reasons he didn't do it, he said, is
19 because he was a fugitive. I submit to you, this is
20 a person who is being honest with you because he
21 could very easily lie about all of this.

22 For all the people that Mr. Bruno
23 characterized as liars, it's very interesting that
24 Andrew O'Brien, with all of the issues he has, he
25 told you that he had a gun or he had friends who had

1 a gun, he could have done something about it. They
2 discussed doing something about it and yet they
3 didn't.

4 Now, what happens in this case? You know
5 that there was the argument at the popcorn stand.
6 You know that the defendant made his threats and that
7 then the deceased and his group went into the
8 theater.

9 What does Jimenez do? He decides to go
10 out into the parking lot, go to his car and come
11 back. Now, Esco Blaylock told you that he came back
12 into the theater, and what is he wearing? A jacket.
13 He's wearing a jacket on July 3. I submit to you, he
14 was wearing the jacket because the jacket concealed
15 the gun, and Esco Blaylock also told you that he left
16 his post at the popcorn stand and he went and he
17 stood behind the back right aisle and he did so
18 because he wanted to see some of Batman and what
19 happened?

20 He said that the door opened on the
21 opposite aisle, and the door is on a timer so it
22 closes very slowly, and the defendant was illuminated
23 by the light that came in from the door, and he
24 recognized him and he told you he knew him as Leon.
25 He also told you that he had recognized him back from

1 the popcorn stand. He told you Leon was cutting the
2 line.

3 Now, the one thing that defense counsel
4 didn't address in his summation, I'm going to
5 address, and that's the issue of identification. He
6 talked around it. He talked about race. I submit to
7 you that this whole business about male black, male
8 Jamaican, Puerto Rican who looks black, it's really
9 irrelevant.

10 MR. BRUNO: Objection to Puerto Rican who
11 looks black, your Honor. Not a fact in evidence.

12 THE COURT: Sustained.

13 MS. MATTAWAY: If you don't believe what I
14 say, ask for it in the record as to what Esco
15 Blaylock said in his statement to the police about
16 his description of Leon's race. But, you know what
17 it is? It's a label, what people are. It's just a
18 label. Bernie Williams, one block down, is he a male
19 black? He's Puerto Rican. Looks black. Would you
20 describe him as black? Would you describe him as
21 Hispanic? Cameron Diaz, is she a hot, white blond
22 female or is she a Latina? I mean, think about it.
23 Tiger Woods, what is he? Is he a male black? He's
24 Philippino. What is his description? What does it
25 matter? Because if you know a person, if you know

1 and you see Cameron Diaz, you know it's Cameron Diaz.
2 It doesn't really matter what the description is of
3 her race because the world is a melting pot and many
4 people are multiracial, so you can be more than one
5 race, and it's actually kind of uncomfortable, I
6 submit, when you're asking a person who is of color
7 such as Mike Centeno about his complexion and how he
8 sees himself and do you see yourself as light skinned
9 or dark skinned and the shooter was dark skinned. I
10 submit to you that, first of all, we can't lose sight
11 of the fact that this all happened at night in a dark
12 theater and nobody really looks whatever color they
13 really are when you're in darkness.

14 MR. BRUNO: Objection, your Honor.

15 Testifying.

16 THE COURT: Sustained. Watch the way you
17 phrase things.

18 MS. MATTAWAY: I submit, I submit it was a
19 dark theater, and I submit that the witness'
20 description of the defendant's complexion is not
21 necessarily --

22 MR. BRUNO: Objection. Not a fact in
23 evidence.

24 THE COURT: Overruled. Move on.

25 MS. MATTAWAY: -- something that you

1 cannot reconcile with his in-court appearance and
2 this is why: Because Esco Blaylock knew the
3 defendant. He knew him. If I know you, you can age
4 17 years, but I know you. And if you ask me to put a
5 label on you, well, what is he to you? Esco Blaylock
6 told you things about the defendant only someone who
7 knows him, I submit, could know. How does he know he
8 has a removable gold tooth? Where would he come up
9 with that? He knows him by the name "Leon." He
10 knows him. One of the many bases of knowledge for
11 him to know, know who the defendant is, is because
12 Esco thought they knew the same woman, girl, woman,
13 Sharon, not Lisa McGainey. That's his girlfriend.
14 But, they had a female friend in common, and I submit
15 to you, it's in the record. If you don't believe me,
16 just ask for it. But Esco told you that he thought
17 she was dating the defendant. The point is this:
18 He's 15. He's 15 at the time this happens. Think
19 back to when you were 15. What was important to you
20 if you were dating somebody? I mean, defense counsel
21 talked about raging hormones. Well, I submit that
22 the females in Esco Blaylock's life back when he was
23 15 were very important to him.

24 Not only that, do you remember when Esco
25 Blaylock was testifying about his job working at the

1 popcorn counter and how seriously he took it, and he
2 knew that he was running low and he has 20 bags on
3 reserve but the line was long, and what did Mr. Bruno
4 do when he testified? I submit to you, he insulted
5 him. Oh, that job, that important job you got fired
6 from. How dare he. How dare he. How many of you
7 not only had jobs when you were teenagers that you
8 took seriously even if now you look back and said, I
9 can't believe I worked at McDonald's, but you did and
10 at the time if your boss yelled at you because you
11 showed up late, or you got fired, it was huge. Do
12 you know if he contributed to his family income and
13 he needed that job and maybe that's why his parents
14 were --

15 MR. BRUNO: Objection. Calls for
16 speculation.

17 THE COURT: Sustained.

18 MS. MATTAWAY: Esco Blaylock told you his
19 parents told him not to cooperate with the police.
20 Okay. Maybe it was just plain fear. How many of you
21 with children or even without can imagine having a
22 teenager who comes home and says, Mom, Dad, I saw a
23 murder at work tonight and the cops want to speak to
24 me. How excited do you think you would be over that
25 prospect? I submit, not very.

1 And, in fact, it is possible you might
2 have the same reaction as Esco Blaylock's parents,
3 don't talk to them, don't talk to them. And the
4 Whitestone theater, the Whitestone theater, Mr. Bruno
5 made some argument to you that the Whitestone theater
6 would not have leaned on its employees to not
7 cooperate because they have every reason of making
8 sure the theater was safe. I say the reverse is true
9 for two reasons: Number one, the last thing you want
10 if you have a thriving business is July 4 weekend you
11 have just opened a blockbuster at your theater, the
12 last thing you want are cops all around. You don't
13 want yellow tape, because you know something, how
14 many of you, and it was just July 4 only a couple of
15 days ago, how many of you read the newspapers on the
16 4th of July? I submit, a lot of you didn't, and I
17 submit that when this happened, yeah, a lot of people
18 knew about the shooting, maybe some people didn't,
19 and if the theater still wanted people to keep coming
20 to the Whitestone Cinema, the less, the less police
21 that were crawling around, the better. So, the
22 sooner they could get the cops out of their theater,
23 the better for the Whitestone.

24 Mr. Bruno argued that the theater should
25 want their employees to cooperate. Why wouldn't they

1 want to see, you know, a person getting caught for a
2 murder? No, no, no, no. They don't want the cops
3 anywhere near that, and that brings me to my second
4 argument about the Whitestone theater: Corporate
5 dollars.

6 Do you really think the Whitestone theater
7 wanted their theater shut down a single movie showing
8 more than necessary for the cops to investigate this
9 case? I submit to you, they didn't. The sooner they
10 could get things back to normal, the better, and
11 what's the second prong of my corporate America
12 argument? Negligence. Liability. How about
13 security guards who let a bad guy go. How about
14 security guards who let people with guns come into
15 the Whitestone, but that's not this trial. You see,
16 this is the murder trial. That's why Whitestone
17 didn't want people to cooperate, because something
18 really bad happened on their grounds that night in
19 the Whitestone and it is possible, I submit to you,
20 they could be held liable, but that's a different
21 trial, a different time.

22 MR. BRUNO: Objection, your Honor.

23 THE COURT: Sustained. You are going far
24 afield. Stay to the facts of the case.

25 MS. MATTAWAY: Esco Blaylock and Mike

1 Centeno both told you that management told them,
2 Don't talk to anybody. Don't talk to anybody.

3 MR. BRUNO: Objection, not Centeno's
4 testimony.

5 THE COURT: Sustained.

6 MS. MATTAWAY: Harold Hazeley also worked
7 for them. Ask for his testimony if you have a
8 question about this issue.

9 Now, in any event, let's get to the
10 shooting -- just unplug it and take it out. I
11 apologize, your Honor.

12 (Brief pause in the proceedings.)

13 MS. MATTAWAY: Let's talk about the
14 shooting -- okay? -- the moment of the shooting.
15 What happens? They're in their seats. The defendant
16 comes to the back of the theater. He calls out.
17 Now, what exact words he says, pea soup. Doesn't
18 matter. Whether he said you from the popcorn line,
19 whether he said you with the smart mouth, it doesn't
20 matter. He calls out. Now, how many of you have
21 ever seen a movie, and you were the one who went out
22 to get the stuff from the concession stand and
23 someone in your party held the seats with the coats
24 or whatever and you go into the dark theater and
25 you're trying to find them? How easy is it? Not

1 easy at all, unless the person in your party is
2 turning around and waving and letting you know we're
3 here, we are sitting here. Right? Because you can't
4 see. It's hard. You're squinting, you're looking,
5 and until the person in your party waves to you and
6 let's you know this is where you're sitting, you
7 can't find them, so how hard do you think this
8 defendant had to look to find the people? He had to
9 look hard. He had to really, really want to find
10 them, and he did.

11 I have to prove -- I have to prove
12 elements. I have to prove them all. If I don't
13 prove even one, he's not guilty. If I prove them
14 all, he's guilty. One of the elements I have to
15 prove, I submit to you, is an intent, and the judge
16 will define intent for you legally, but I'm going to
17 tell you now, how do you know that this defendant
18 intended to kill Sean Worrell? How do you know he
19 meant to do it?

20 Let's look at the choices he made that
21 night, because he made a lot of choices. It started
22 with the choice to cut the line. It -- withdrawn.
23 He continued with the choice to engage in an argument
24 on the popcorn line. It continued with the threat to
25 go get his gun. At that point, they turn away. They

1 go in the theater. He had a choice, but what did he
2 choose to do? He chooses to go to the car and get
3 the gun and, again, as I said before, this is a man
4 who had just been insulted in front of his girl, and
5 he knew he had a gun and he didn't know that they had
6 guns, so he made a choice. He went to the car. He
7 got the gun. Then he chose to come back into the
8 theater. Then he chose to walk down that long
9 corridor -- and the photographs are in evidence --
10 until he got to Theater 1 all the way on the end, and
11 what do we see as we are going to Theater 1? We see
12 exit doors.

13 Do you think the little voice of his
14 conscience spoke up at that point and said, You don't
15 have to do this, go through the doors now? No. He
16 made another choice, and his choice was to turn away
17 from the exit doors on the left that are in evidence
18 in the photograph and to make a right and go into
19 Theater 1. A choice.

20 It all goes to intent, and he made a
21 choice to stand at the back of the theater, and he
22 made a choice to call out and he made a choice to get
23 into words with O'Brien.

24 Now, defense counsel mocked those words
25 and he used them when he was busy smearing Detective

1 Wendell Stradford saying after the trial it's him and
2 me. These are words said by a killer right before he
3 goes and takes a life. How dare he. And what does
4 he say? After the movie, it's you and me.

5 So, maybe the beef was with Andrew O'Brien
6 and Patchy. Maybe Shaka stood up to avenge his
7 friend. Whatever it was, was Shaka the one in line?
8 Was Andrew O'Brien in line? It's pea soup. The
9 point is what happened. As Jimenez goes to the back,
10 you heard from Ruben Velazquez, Shaka gets up and
11 what does he do? He heads out into the aisle.

12 Now, this is where the forensics come in.
13 Dr. Ely's testimony, the autopsy report, it's
14 crucial. What does she tell you? She tells you that
15 bullet number 1 enters Shaka's body through his left
16 deltoid at his back. What does she tell you? She
17 takes a pole and she tells you that the one thing she
18 can say conclusively is that all three points have to
19 match up in space, and what do you know about shot
20 number 1? Because the wound entered through the
21 back, but it exited through the right and it stayed
22 in his body. It was a straight line.

23 MR. BRUNO: Objection, your Honor. No
24 bullet was found.

25 THE COURT: Sustained. Sustained.

1 MS. MATTAWAY: It traveled through his
2 body. It traveled through his body. I meant it
3 stayed through his body on its path through him.
4 There is no bullet recovered in the body. It
5 traveled in one path, but she said that because of
6 the trajectory of the bullet, the body had to be at a
7 90-degree angle to the gun, to the muzzle of the gun.
8 That's what she said, and she talked and she bent her
9 body and if you don't remember what she said, Page
10 612, 613 in the record, it's all in there, and she
11 demonstrated for you how the bullet went into his
12 body and how it came out, but the point was his left
13 side, his back was to the muzzle of the gun. This
14 defendant, this coward of a shooter, did not even
15 give this guy a chance to turn around and face him.
16 He was getting out of his seat. He was getting out
17 of the aisle. His back was to the shooter as he came
18 around the aisle seat. He hurried out you heard from
19 Velazquez.

20 Now, what's interesting is part of what
21 Dr. Ely said about his right arm because that's the
22 question, isn't it? What was the right arm doing?
23 Defense counsel demonstrated to you it was straight
24 out holding a .38. I submit to you that's not what
25 happened at all because Dr. Ely told you the arm had

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1 to be out somewhat and she did a little demonstration
2 with you. Okay? She told you about the ways the arm
3 could have been pointed. It's in the record. If you
4 don't remember, ask for it. But, she said that the
5 only way that he could have been shot is if the arm
6 was out this way.

7 Now, what is the arm doing in this
8 position? There is a couple of things it could have
9 been doing. It could have been up in surrender. He
10 could have been pushing off the seat back to get out,
11 and he could have been going to his waist to get out
12 his gun. He could have been, but the one thing he
13 wasn't doing and we know he wasn't doing was turning
14 and pointing towards his shooter, because he never
15 got the chance, because right after shot one came
16 shot two, and we all know what shot two was about,
17 don't we? Entry through the back, the back of the
18 head, exit through the front. Here are the photos,
19 People's 17.

20 At first blush, you take a look at it and
21 it looks like the guy got shot in the forehead,
22 right? But what did Dr. Ely tell you? She said that
23 People's 17-A, the back of the head shot, is a
24 classic entrance wound because it's circular, and
25 17-B is a classic exit shot because it's star shaped

1 and, of course, they also examined the brain, and she
2 told you and the autopsy report is in evidence if you
3 want to take a look at it, but she told you the
4 bullet traveled back to front. This man was shot in
5 the back of his head.

6 Now, he's shot in the back of his head.
7 Why is that important? Well, because if he's shot in
8 the back of the head and he falls face down, I'm
9 holding People's 1 now, it's important because he's
10 not facing the muzzle of the gun, and I submit to
11 you, the place he's facing, you can see quite clearly
12 in People's 1-A, is the exit door to the front of the
13 screen.

14 I submit to you that in his final moments
15 Sean Worrell, he had no place to go but out. He
16 wasn't going to run towards the gun. He couldn't run
17 back in the row. He couldn't get his gun out in
18 time, and Dr. Ely told you that with wound number one
19 -- I'm now holding People's 14 -- which entered
20 through the back, he had seconds to live. She told
21 you that he could have died. Wound number one was
22 fatal as well. The cause of death to Sean Worrell is
23 bullet wound to heart and lung -- that's from wound
24 one -- and bullet wound to brain.

25 But what's important is between receiving

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1 bullet wound one and bullet wound two, could Sean
2 Worrell have returned fire? Now, since none of the
3 witnesses really -- Andrew O'Brien, I believe, said
4 he saw him fire. Esco Blaylock said he didn't see
5 him with a gun and neither did Ruben Velazquez, but
6 that's why I submitted to you that I think he shot in
7 between shots one and two, but it was too late
8 because shot one was already the shot that could have
9 killed him, so he was dying from shot one.

10 According to Dr. Ely, Sean Worrell had
11 seconds to live because this bullet passed through
12 his aorta, and she told you about that. He was dying
13 from this, and I submit to you that is when the arm
14 was reaching, but he didn't get it out in time to
15 kill the person who killed him.

16 All he did was take a shot, and the shot,
17 as Harold Hazeley marked, I submit to you went wild,
18 and that is here in People's 8, 8-C. There it is.
19 There is the red dot. So, he got a shot off, and he
20 was fairly accurate, but it didn't kill his killer.

21 As Dr. Ely told you, he fell face down
22 because he had the unprotected fall abrasions on his
23 face, and you can see those in People's 17-B, and she
24 told you that after wound number two, he would not
25 have been able to do anything.

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1 MS. MATTAWAY: She told you he just
2 would have fallen flat. Once that bullet hit the
3 brain from back to front, he was incapacitated.
4 He would have fallen instantly. You see by
5 process of elimination we know that there is no
6 way that the third shot of the three pops heard
7 the third shot was Sean Worrell. It can't be the
8 third because he's dead. He's done by wound
9 number two. And we know it's not the first
10 because Esco Blaylock Rubeun Velasquez and Andrew
11 O'Brien and attention was on the muzzle flash from
12 the back. The first muzzle flash came from the
13 back.

14 So I submit to you the middle shot the middle
15 of the three shots if the first shot is from the
16 defendant, that's wound one in the back shot
17 number two is either close simultaneously I submit
18 from shot one from the deceased and then the head
19 shot to the back of the brain. Whether he's
20 shooting as he's running and turning we don't
21 know. But the only thing we do know are the
22 forensics that don't lie. The man is shot in the
23 back of the back and the back of the head.

24 Mr. Bruno talked about initial aggressor, who
25 was the initial aggressor. I submit to you it

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1 doesn't really matter. You're not gonna hear the
2 judge tell you anything about justification or
3 self defense. You won't hear it. You said that
4 you could apply the law that you get from the
5 judge when we were picking you as jurors. You
6 could apply the law even if you personally
7 disagree with it. The judge will be giving you
8 law in a little bit and you are to apply the law
9 to the facts of this case.

10 Again, I have elements I have to prove.
11 There is only one charge to consider and it's
12 murder. I have to prove that the defendant
13 intended, intended, we talked about intent -- all
14 the choices he made to cause the death. You know
15 from Doctor Ely death was caused by bullet one.
16 It was also caused by bullet two or wound two. So
17 he intended to kill him even with the first bullet
18 but the second bullet certainly did it. Even if
19 you want to say he still could have fired after
20 the bullet in the back because he had a few
21 seconds there and finally I have to prove that the
22 person who was killed was Sean Worrell. You heard
23 from his sister and you heard from Andrew O'Brien
24 who knew him Shaka. It's Shaka. Shaka as I said
25 is not on trial. The issue is not whether or not

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1 he was armed with a gun. The issue is not whether
2 or not he took a shot to defend himself. The
3 issue is whether or not I have proven to you it is
4 the defendant who did it.

5 I submit to you that I have. He was
6 identified twice in court by Andrew O'Brien and
7 Esco Blaylock one of who knew him. Esco knew him.
8 And we talked about that. But what's the final
9 icing on the cake? I submit to you is the
10 defendant's own words to Kevin Morrissey because
11 what does he do? Remember the quicksand, right.
12 He's free. He got away with this, 17 years. And
13 then he's in jail in 2006 and he does meet up with
14 Kevin Morrissey on the barge and they chat. And
15 yes Morrissey is an opportunist. He's an
16 opportunist. But when the defendant asks him to
17 help him with his case, he said well you gotta
18 tell me about your case before I help you. What
19 does the defendant tell him? He tells him, and
20 it's in the record. If you forget what he says,
21 ask for it. "I shot the kid. Right. I shot the
22 kid in the movie theater." He says, "he shot at
23 me first." He puts -- he puts a self defense
24 claim into it with Kevin Morrissey. How would
25 Morrissey know that? Defense counsel tries to

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1 make it like well Morrissey read some papers. He
2 looked at some paperwork and he's testifying and
3 the defendant never said this to him in jail. You
4 know this is not through.

5 MR. BRUNO: Objection to what they know
6 as true.

7 THE COURT: Sustained. I will instruct
8 the jury how to evaluate the evidence at the
9 appropriate time. Move on.

10 MS. MATTAWAY: I submit to you that the
11 defendant talked to Kevin Morrissey in jail. He
12 told him what happened. If you don't remember
13 what Morrissey said about the defendant's
14 admission, ask for it because it's in the record.
15 But what's key about it? What's key about Kevin
16 Morrissey? Why is it important? Because I submit
17 to you the defendant essentially identified
18 himself. Right. He doesn't say to Morrissey yeah
19 they got me here for a murder but I didn't do it.
20 They got the wrong guy. He doesn't say that. He
21 says to Morrissey I shot a kid 17 years ago. You
22 see. There is some things you never forget.
23 Defense counsel slammed my police witnesses. Why
24 did it take seventeen years to get to this point.
25 Bad cops, bad cops. Oh they are so bad. Serrano,

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1 oh Stradford, they are evasive. He called them
2 almost every name in the book. You know
3 something, it may be justice delayed but it's
4 justice. And if it took seventeen years for us to
5 get to this point, we're here. Ricardo Jimenez
6 shot and killed Sean Worrell in the Whitestone
7 cinema on July 3, 1989. Esco Blaylock who was 15
8 at the time never forgot it. Andrew O'Brien who
9 faced his own troubles in the years following and
10 yeah he's doing time for his own problems, he
11 never forgot it. All of these witnesses who came
12 to court and testified for you I submit never
13 forgot it. The stuff they did forget is pea soup.
14 The stuff they remember is the stuff you need to
15 base your verdict on.

16 There is no reasonable doubt. No reasonable
17 doubt. And if for some reason you have reasonable
18 doubt at all, well, one in court ID, two in court
19 ID's. Esco says he knew him. How about the fact
20 the defendant himself said to someone at Rikers I
21 shot a kid 17 years ago. I shot a kid. Who says
22 that?

23 Now, the man who was boasting at the
24 Whitestone Cinema at the popcorn counter seventeen
25 years ago, I'm gonna go get my gun. He was

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1 bluffing then? I submit to you he was not
2 bluffing with Kevin Morrissey. He generally
3 sought out his help to research his case. But
4 Kevin Morrissey instead of helping him with his
5 case picked up a phone or wrote a letter or
6 however he did, how he called his agent dear
7 Craig, it's pea soup. The point is he contacted
8 law enforcement authorities and yeah it could help
9 him. Yeah he wants a phone call out of it to
10 Queens. But the guy told him I shot a kid. And
11 Kevin Morrissey had no reason to not believe
12 Ricardo Jimenez and I submit you shouldn't either.
13 And when the defendant says I shot a kid, he shot
14 a kid. He intended to do it. He did it. He
15 killed Sean Worrell and I submit to you he's
16 guilty. Thank you.

17 THE COURT: Ladies and Gentlemen, I
18 anticipate that my charging you on the law will
19 take approximately thirty, thirty-five minutes.
20 Is there anyone in the jury box who would like to
21 take a brief break before I start that.

22 Everybody is okay.

23 Mr. Foreman, members of the jury, we
24 have now reached that point in the trial when you
25 are to assume your active functions as jurors. I

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1 want to begin by thanking you for your patience,
2 your attention, your cooperation, and
3 understanding during the course of this trial.

4 The case has been capably presented by counsel on
5 both sides. I want to thank them both also.

6 You have heard all the testimony in the case.
7 I shall endeavor to simplify the issues as much as
8 I can in submitting them to you. I shall divide
9 my charge into two parts. The first part will
10 concern general principles of law that apply to
11 this and all criminal cases. The second part of
12 my charge will deal specifically to the charge
13 being submitted for your consideration. During
14 these instructions, I will summerize the evidence.
15 If necessary I will refer to portion of the
16 evidence to explain the law that relates to it.
17 My reference to evidence or my failure to refer to
18 evidence expresses no opinion about the
19 truthfulness, accuracy, or importance of any
20 particular evidence. It is up to you to determine
21 what happened in this case.

22 There have been some verbal exchanges between
23 counsel. You must disregard these entirely. In
24 other words, you are not to draw any inferences
25 from anything said by one counsel to the other.

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1 Such comments are not evidence. During the course
2 of the trial you may have heard colloquy or
3 conversations between the court and counsel. Bear
4 in mind such exchanges between the court and
5 counsel do not constitute evidence and must be
6 disregarded by you. I will now state to you some
7 of the general principles of law applicable to
8 this and all criminal cases. I charge you that
9 you must accept the principles of law as stated by
10 me whether you agree with them or not. You have
11 no discretion whatsoever to depart from the
12 principles of law which I shall give you. You and
13 I are sitting here together as judges. You as a
14 judge of the facts, I as a judge of the law. The
15 first and most cardinal principle for you as
16 jurors to remember is that you are the sole and
17 exclusive judges of the facts in this case. In
18 that capacity you'll decide the facts coolly,
19 calmly, deliberately, and without fear or favor or
20 passion or prejudice or sympathy.

21 As sole and exclusive judges of the facts, it
22 is your sworn duty to decide the guilt or non
23 guilt of the defendant solely on the evidence
24 admitted during the trial and pass judgment upon
25 it in the determination of all the issues.

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1 Your determination must not be based solely--
2 withdrawn. I must say that again. Your
3 determination must be solely based upon the
4 evidence submitted during a trial. You must not
5 consider anything you may have seen or heard about
6 the case outside of this courtroom, including but
7 not limited to any news or media reports of any
8 kind.

9 You must not under any circumstances indulge
10 in speculation or guesswork. There are rules of
11 evidence that precludes some kind of testimony and
12 you are not to speculate as to what the testimony
13 might have been.

14 In other words, do not try to play detective.
15 Do not try to surmise what you would do, or what
16 should have been done, or might have been done, or
17 could have been done. Your own recollection,
18 understanding, and evaluation of the facts
19 presented by the evidence of this trial is what
20 controls, regardless of what counsel from either
21 side of the case may say about the facts and even
22 regardless of what I may say about the facts.

23 During summations both sides may have made
24 reference to items in evidence. I tell you it is
25 your job to evaluate the evidence and determine

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1 what weight to give the evidence, if any. I will
2 talk about evaluating the evidence in a few
3 minutes.

4 You are not to consider anything I have said
5 during the trial, or any questions I have asked,
6 or anything I may say to you during the course of
7 this charge, as indicative that I have any opinion
8 on the case one way or the other. I have no power
9 to tell you what facts are or that one fact is
10 more important than another. What witness is
11 truthful and what witness is untruthful. These
12 are all matters within your own and exclusive
13 powers as the judges of the facts. It is not my
14 responsibility to judge the evidence here. It is
15 yours. You and you alone are responsible for
16 deciding whether a defendant is guilty or not
17 guilty. You are not bound to accept the arguments
18 of respective counsel. If you find that any
19 argument urged by either counsel is reasonable and
20 logical and based upon the evidence as you recall
21 it, you find the argument consistent with that
22 evidence, you are free to accept the argument as
23 your own and to give it such weight as you deem
24 advisable.

25 On the other hand, if you find that any

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1 argument or conclusion is not based upon the
2 evidence, or that it is unreasonable, illogical or
3 inconsistent with the evidence, you may disregard
4 it entirely.

5 As to the law in the case, however, you as
6 jurors must not set up your own conceptions or
7 preconceived notions of what the law should be.
8 You must accept the law as I give it to you,
9 regardless of what either side may have said or
10 what you personally believe. You must accept the
11 law as I give it o you without reservation; and
12 you must apply the law as given to you for your
13 own guidance in your determination of the issues
14 of facts.

15 There are certain presumptions of law that
16 apply to this and every criminal case to which I
17 must call your attention and which you must keep
18 in mind throughout your deliberations.

19 In this and every criminal case the accused
20 is presumed to be innocent and that presumption
21 remains with him throughout the trial unless and
22 until his guilt is proven beyond a reasonable
23 doubt. That presumption of innocence continues
24 right through the trial and exists at this very
25 moment and accompanies you into the jury room.

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1 The only way it can be destroyed is by all of you
2 as jurors, agreeing on the basis of the evidence
3 that the defendant is guilty. You must start by
4 saying he must be innocent; and only if the
5 evidence that you accept or believe convinces you
6 beyond a reasonable doubt that the presumption
7 must be discarded and a verdict of guilty returned
8 -- only then is the presumption destroyed. No
9 defendant is required to prove his innocence.

10 Each element of the crime submitted to you,
11 as I will define the elements, must be proven
12 beyond a reasonable doubt by the prosecution.

13 If this burden is not fulfilled, you must
14 find the defendant not guilty. If this burden is
15 fulfilled, you must find the defendant guilty.

16 The next principle is reasonable doubt. What
17 is the meaning of the term "reasonable doubt"?
18 The law uses the term "proof beyond a reasonable
19 doubt," to tell you how convincing the evidence of
20 guilt must be to permit a verdict of guilty. The
21 law recognizes that, in dealing with human
22 affairs, there are very few things in this world
23 that we know with absolute certainty. Therefore,
24 the law does not require the People to prove a
25 defendant guilty beyond all possible doubt.

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1 On the other hand, it is not sufficient to
2 prove that a defendant is probably guilty. In a
3 criminal case the proof of guilt must be stronger
4 than that. It must be "beyond a reasonable
5 doubt".

6 A reasonable doubt is an honest doubt of the
7 defendant's guilt for which a reason exists based
8 upon the nature and quality of the evidence. It
9 is an actual doubt, not an imagnate doubt. It is
10 a doubt that a reasonable person, acting in a
11 matter of this importance, would be likely to
12 entertain because of the evidence that was
13 presented or because of the lack of convincing
14 evidence.

15 Proof of guilt beyond a reasonable doubt is
16 proof that leaves you so firmly convinced of the
17 defendant's guilt that you have no reasonable
18 doubt of the existence of any element of the crime
19 or of the defendant's identity as the person who
20 committed the crime.

21 In determining whether or not the People have
22 proven the defendant's guilt beyond a reasonable
23 doubt, you should be guided solely by a full and
24 fair evaluation of the evidence. After carefully
25 evaluating the evidence, each of you must decide

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1 whether or not that evidence convinces you beyond
2 a reasonable doubt of the defendant's guilt.

3 Whatever your verdict may be, it must not
4 rest on baseless speculations. Nor may it be
5 influenced in any way by bias, prejudice, sympathy
6 or by a desire to bring an end to your
7 deliberations or to avoid an unpleasant duty.

8 If you are not convinced beyond a reason
9 doubt that a defendant is guilty of a charged
10 crime, you must find the defendant not guilty of
11 that charged crime. If you are convinced beyond a
12 reasonable doubt that a defendant is guilty of a
13 charged crime, you must find the defendant guilty
14 of that crime.

15 Under our system of jurisprudence, all cases
16 in this court are initiated by way of charges.
17 The charges are contained in the accusatory
18 instrument called an indictment. An indictment is
19 merely a legal form by which a crime is charged.
20 It's nothing more than an accusation. It has not
21 evidentiary or probative value whatsoever. It is
22 neither evidence of anything nor does it prove
23 anything.

24 Under our system, trials are conducted by the
25 taking of testimony of witnesses who are examined

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1 under oath directly by the side calling them to
2 the witness stand. The adverse party has a right
3 to cross-examine such witness after direct
4 examination is completed.

5 This sworn testimony elicited both on direct
6 and cross examination, plus whatever concessions
7 and stipulations were made during the trial by
8 counsel, plus, whatever exhibits the court
9 permitted to be received and marked in evidence is
10 all the evidence that there is in this case. It
11 is only on this evidence that you are to make your
12 final determination of the facts.

13 Exhibits that were seen during the trial, or
14 marked for identification but not received in
15 evidence are not evidence, and thus are not
16 available for your inspection and consideration.
17 But testimony based on exhibits that were not
18 received in evidence may be considered by you.
19 It is just that the exhibit itself is not
20 available for your inspection and consideration.

21 Each and everyone of you has it within his or
22 her power to draw proper reasonable and just
23 inferences from the testimony, and the exhibits in
24 evidence and to determine the probabilities
25 arising from the case after carefully analyzing,

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1 weighing or considering the testimony of each
2 witness who has testified at this trial and all
3 the exhibits admitted into evidence in the case.

4 The defendant is entitled to every inference
5 in his favor which can reasonable be drawn from
6 the evidence; and where two inferences may be
7 drawn from the evidence, one consistent with guilt
8 and one consistent with innocence, the defendant
9 is entitled to the inference of innocence.

10 Other considerations that may cross your mind
11 such as on one hand sympathy or at the other
12 extreme, vengeance; or prejudice or bias of any
13 kind, these considerations are to be completely
14 disregarded by you.

15 Among the exhibits received in evidence are
16 photographs. These photographs purport to depict
17 various locations or objects relative to the
18 issues in this case. These photographs were
19 received in evidence to assist you in making your
20 evaluation of the testimony relating to the
21 locations scenes or objects depicted therein. You
22 are the sole judges of the accuracy of these
23 photographs and you're the sole judges of the
24 weight to be given such photographs. I remind you
25 that it is a responsibility of the District

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1 Attorney to present evidence on behalf of the
2 People.

3 In sustaining the burden of proof you are not
4 required to take any particular investigatory
5 steps or present any particular kind of evidence.

6 One of your chief functions as judges of the
7 fact is to determine the credibility of witnesses.
8 Because the facts depend on the testimony of the
9 witnesses. You and you alone have the power to
10 say when a witness is truthful or not truthful or
11 what weight you should give that witness's
12 testimony.

13 You should consider the witness' means of
14 knowledge or observations as to the facts, their
15 interest or motive for testifying, the probability
16 or improbability of their testimony, their
17 intelligence or lack of intelligence, the manner
18 of testifying and their attitude.

19 You should ask yourselves was the witness
20 neutral, friendly, or hostile? Was the witness
21 frank, honest, reliable and trustworthy in their
22 recital of the facts, or was the witness bias or
23 prejudice, or did the witness have a reason to
24 falsify?

25 There are many aids in determining whether a

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1 person is telling the truth. You are to employ
2 any of them that you know of and that you see used
3 in your every day lives.

4 There is no particular formula for evaluating
5 the truthfulness and accuracy of another person's
6 statements or testimony. You bring to this
7 process all your varied experiences. In life, you
8 frequently decide the truthfulness and accuracy of
9 statements made to you by other people. The same
10 factors you use in those decisions should be used
11 in this case when evaluating the testimony.

12 You also have a right to consider whether any
13 witness is actuated by bias or prejudice or has an
14 interest in the outcome of the case which might
15 permit that person to testify to something other
16 than the truth; whether to testify falsely or to
17 testify by giving a half truth.

18 You may consider whether a witness has an
19 interest in the outcome of a case or instead if a
20 witness has no such interest. You are not
21 required to reject the testimony of an interested
22 witness, or to accept the testimony of a witness
23 who has no interest in the outcome of the case.
24 You may however, consider whether an interest in
25 the outcome, or lack of such interest, affected

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1 the truthfulness of the witness' testimony.

2 If in your deliberations you find that any
3 witness has willfully testified falsely as to any
4 material fact, you are at perfect liberty to
5 disregard the entire testimony or you may
6 disregard so much of the testimony that you
7 believe is untruthful and accept so much of the
8 testimony that you find to have been truthfully
9 given. It is the quality of the testimony that is
10 controlling, not the quantity of the testimony or
11 the number of witnesses testifying.

12 Questions are not evidence. It is the
13 answers given to the questions that constitutes
14 the evidence. Inferences or suggestions contained
15 in a question do not make the fact when the answer
16 negates the inference or suggestion contained in
17 that question.

18 Whenever any inconsistencies appear in the
19 testimony of a witness it is your duty to
20 reconcile them if you are honestly able to do so.
21 You are not to reject as arbitrary the testimony
22 of any witness. You should consider the testimony
23 of every witness carefully and determine whether
24 you will accept it or reject it in whole or in
25 part.

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1 Whenever you find conflicting testimony which
2 you are not able to reconcile, do not hesitate to
3 cast aside that which you deem exaggerated or
4 mistaken or willfully false and accept only that
5 portion which you deem to be true.

6 Testimony which was stricken from the record
7 or to which an objection was sustained must be
8 disregarded by you.

9 You may consider whether a witness made
10 statements at this trial that were inconsistent
11 with one another.

12 You may also consider whether a witness made
13 a previous statement inconsistent with his or her
14 testimony at trial.

15 You may consider whether a witness testified
16 to a fact here at trial that a witness omitted to
17 state, at a prior time, when it would have been
18 reasonable and logical for the witness to have
19 stated the fact. In determining whether it would
20 have been reasonable and logical for the witness
21 to have stated the omitted fact, you may consider
22 whether the witness' attention was called to the
23 matter and whether the witness was asked about it.

24 If a witness has made such inconsistent
25 statements or omissions, you may consider whether

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1 and to what extent they affect the truthfulness or
2 accuracy of that witness' testimony here at this
3 trial.

4 The contents of the prior inconsistent
5 statements are not proof of what happened. You
6 made use evidence of a prior inconsistent
7 statement only to evaluate the truthfulness and
8 accuracy of the witness' testimony here at trial.

9 You may consider whether a witness' testimony
10 is consistent with the testimony of other
11 witnesses or with other evidence in the case.

12 If there were inconsistencies by and among
13 witnesses, you may consider whether they were
14 significant inconsistencies related to important
15 facts, or instead were they the kind of minor
16 inconsistencies that one might expect from
17 multiple witnesses to the same event.

18 You have heard testimony about witnesses
19 being talked to about the case before the witness
20 testified at trial. The law does not prohibit
21 attorneys from either side of speaking to a
22 witness about the case before the witness
23 testifies, nor does it prohibit the attorneys from
24 reviewing with the witness the questions that will
25 be asked at trial.

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1 You have also heard testimony that witnesses
2 read certain material pertaining to the case
3 before the witness testified at trial. The law
4 does not prohibit a witness from doing so. You
5 may consider whether a witness has been convicted
6 of a crime or has engaged in criminal conduct and
7 if so whether and to what extent it affects the
8 truthfulness of that witness' testimony. You are
9 not required to reject the testimony of a witness
10 who has been convicted of a crime, who has engaged
11 in criminal conduct, or to accept the testimony of
12 a witness who has not. You may however, consider
13 whether a witness's criminal conduct or conviction
14 has affected the truthfulness of that witness's
15 testimony here at this trial.

16 (Continued on the next page)

17
18
19
20
21
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24
25

jc-f Jury Charge

1 THE COURT: As you know, an issue in
2 the case is whether the defendant has been
3 correctly identified as the person who
4 committed the charged crime.

5 People have the burden of proving
6 beyond a reasonable doubt not only that a
7 charged crime was committed, but the defendant
8 is the person who committed that crime. Thus,
9 even if you are convinced beyond a reasonable
10 doubt that a charged crime was committed by
11 someone, you cannot convict the defendant of
12 that crime unless you are also convinced beyond
13 a reasonable doubt that he is the person who
14 committed the crime.

15 In examining the testimony of any
16 witness who would identify that person, you
17 should determine whether that testimony is both
18 truthful and accurate. With respect to whether
19 the identification is truthful, that is not
20 deliberately false, you must evaluate the
21 believability of the witness who made an
22 identification. In doing so, you may consider
23 the various factors for evaluating the
24 believability of a witness' testimony that I
25 just listed for a you few moments ago.

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1 With respect to whether the
2 identification is accurate, that is, not an
3 honest mistake, you must evaluate the witness'
4 intelligence and capacity for observation,
5 reasoning and memory and determine whether you
6 are satisfied that the witness is a reliable
7 witness who had an ability to observe or
8 remember the person in question.

9 Further, the accuracy of the witness'
10 testimony in identifying a person also depends
11 on the opportunity the witness had to observe
12 and remember that person. Thus, in evaluating
13 the accuracy of identification testimony, you
14 should also consider such factors as what were
15 the lighting conditions under which the witness
16 made their observations. What was the distance
17 between the witness and the perpetrator, did
18 the witness have an unobstructed view of the
19 perpetrator. Did the witness have an
20 opportunity to see and remember the facial
21 features, body size, hair, skin color and
22 clothing of the perpetrator. For what period
23 of time did the witness actually observe the
24 perpetrator during that time and what direction
25 were the witness and perpetrator facing, and

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1 where was the witness' attention directed. Did
2 the witness have a particular reason to look at
3 and remember the perpetrator. Did the
4 perpetrator have distinct features that a
5 witness would be likely to notice and remember.
6 Did the witness have an opportunity to give a
7 description of the perpetrator. If so, to what
8 extent did it match or not match the defendant
9 as you find the defendant's appearance to have
10 been on the day in question. What was the
11 mental, physical and emotional state of the
12 witness before, during and after the
13 observation. To what extent, if any, did the
14 conditions affect the witness' ability to
15 observe and accurately remember the
16 perpetrator. Did the witness ever see the
17 person identified prior to the date in
18 question. If so, how many times did the
19 witness see that person, and under what
20 circumstances. And to what extent, if any, did
21 those prior observations affect the witness'
22 ability to accurately recognize and identify
23 such person as the perpetrator. When and under
24 what circumstances did the witness identify the
25 defendant. Was the identification of the

1 defendant as the person in question suggestive
2 in some way to the witness before the witness
3 identified the person, or was the
4 identification free of any suggestions.

5 You will recall that Dr. Ely
6 testified about certain scientific and medical
7 and technical matters and gave an opinion of
8 such matters. Ordinarily a witness is limited
9 to testify about facts and is not permitted to
10 give an opinion. Where, however, scientific,
11 medical, technical or other specialized
12 knowledge will help the jury understand the
13 evidence, or to determine a fact in issue, a
14 witness with expertise in a specialized field
15 may render opinions about such matters.

16 You should evaluate the testimony of
17 any such witness just as you would the
18 testimony of any other witness. You may accept
19 or reject such testimony in whole or in part
20 just as you may with respect to the testimony
21 of any other witness.

22 In deciding whether or not to accept
23 such testimony from an expert witness, you
24 should consider the following: The
25 qualifications and believability of the

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1 witness. The facts and other circumstances on
2 which the witness' opinion was based. The
3 accuracy or inaccuracy of any assumptions or
4 hypothetical fact upon which the opinion was
5 based. The reasons given for the witness'
6 opinion. Whether the witness' opinion is
7 consistent or inconsistent with other evidence
8 in the case.

9 In this case, you have heard
10 testimony of police officers. Testimony of a
11 police officer should not be believed solely
12 and simply because the witness is a police
13 officer. At the same time, a witness'
14 testimony should not be disbelieved solely and
15 simply because the witness is a police officer.
16 You must evaluate police officer's testimony in
17 the same way you would evaluate the testimony
18 of anyone else.

19 The defendant did not testify in this
20 case. The fact that he did not testify is not
21 a factor from which any inferences unfavorable
22 to the defendant may be drawn.

23 I charge you in arriving at your
24 verdict, you are not to consider or speculate
25 concerning matters related to sentence or

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1 punishment. Such matters are solely within the
2 province of the court as a matter of law and
3 must not be permitted to have any bearing upon
4 your consideration of the guilt or non-guilt of
5 the defendant.

6 The count of murder in the second
7 degree is being submitted for your
8 consideration. It is alleged that the
9 defendant, Ricardo Jimenez on or about
10 July 3rd, 1989 in the county of the Bronx with
11 intent to cause the death of a person, did
12 cause the death of Sean Worrell by shooting him
13 in the head and chest with a loaded pistol.

14 Under our law, a person is guilty of
15 murder in the second degree when with intent to
16 cause the death of another person, he causes
17 the death of such person.

18 The term intent used in this
19 definition has its own special meaning in our
20 law. Intent means conscious objective or
21 purpose. Thus, a person acts with intent to
22 cause the death of another when that person's
23 conscious objective or purpose is to cause the
24 death of another.

25 In order for you to find the

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1 defendant guilty of this crime, the People are
2 required to prove, from all the evidence in the
3 case, beyond a reasonable doubt both of the
4 following two elements: One, that on or about
5 July 3rd, 1989, in the county of the Bronx, the
6 defendant Ricardo Jimenez caused the death of
7 Sean Worrell. And, two, that the defendant did
8 so with the intent to cause the death of Sean
9 Worrell.

10 If you find that the People have
11 proven beyond a reasonable doubt both of these
12 elements, you must find the defendant guilty as
13 charged.

14 On the other hand, if you find that
15 the People have not proven beyond a reasonable
16 doubt either one or both of these elements, you
17 must find the defendant not guilty.

18 At this point in time, I'm going to
19 retire to the robing room with counsel for a
20 moment. We'll just be a minute. When I come
21 out, I will give you some final instructions
22 and then you will begin your deliberations.

23 Just excuse us for a moment.

24 (Whereupon, the following discussion
25 takes place on the record, in the robing

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1 room, in the presence of the Court, the
2 defense counsels, the Assistant District
3 Attorneys and out of the hearing of the
4 jury:)

5 THE COURT: Exceptions?

6 MR. BRUNO: None by the defense,
7 sir.

8 MS. MATTAWAY: No, it's fine, thank
9 you.

10 THE COURT: Both sides have seen the
11 verdict sheet?

12 MS. MATTAWAY: No.

13 THE COURT: Will the parties
14 stipulate that if the jury should ask for the
15 exhibits, that we can give them the exhibits
16 without the need of reassembling everyone and
17 making a record?

18 MR. BRUNO: Yes, sir, for defense.

19 MS. MATTAWAY: That's fine.

20 THE COURT: With regards to
21 the alternates, should I assume we'll hold
22 onto them for at least the rest of the
23 afternoon?

24 MS. MATTAWAY: We came this far.

25 MR. BRUNO: Yes, that would make

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1 sense.

2 THE COURT: Okay. If there's nothing
3 else, I'll give them the final instructions and
4 send them out.

5 MS. MATTAWAY: Thank you.

6 MR. BRUNO: Thank you.

7 (Whereupon, the following takes place
8 on the record in open court in the hearing
9 and presence of the jury.)

10 THE COURT: We now come to the point
11 in the trial when you are to begin your active
12 roles as jurors.

13 Your verdict must be unanimous. That
14 means all 12 of you must agree.

15 Under our system of jurist prudence,
16 the first juror selected is known as the
17 foreperson. Therefore, Mr. Johnson, you're the
18 foreperson. The foreperson's opinion does not
19 carry any extra weight and his vote doesn't
20 carry any extra weight. What we ask the
21 foreperson to do is if the jury sends out a
22 note, which I'll explain what I mean by that in
23 a few minutes, we ask the foreperson to sign
24 the note and date it. It is not necessary that
25 the foreperson write the note, it is not

jc-f Jury Charge

1 necessary that the foreperson agree with the
2 note, it is just a system we use to assure that
3 the note we're responding to is actually coming
4 from the jury and it helps us track what
5 happens.

6 When you have reached a verdict, you
7 will reassemble in the courtroom. The
8 foreperson will be asked to stand, will be
9 asked if the jury has reached a verdict, he
10 will say yes. You'll be asked what the verdict
11 is, he will give the verdict.

12 The jury will be asked as a group if
13 that's their verdict. You can respond as a
14 group. After that, either side may ask that
15 the jury be polled. At which point, each
16 individual juror will be asked if that's your
17 verdict, and you will respond accordingly.

18 And the foreperson may chair your
19 deliberations, but that is not necessary. It
20 is actually not even necessary that you have a
21 chair for your deliberations. You should
22 conduct your deliberations in any method that
23 you could think of if you feel comfortable.
24 Whatever you think works for you.

25 The clerk has prepared a verdict

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1 sheet and there's only one count being
2 submitted for your determination. It's very
3 self-explanatory.

4 When you have reached a verdict, all
5 12 of you have agreed, you will mark this sheet
6 in the appropriate column. Please only mark it
7 with an X or Y.

8 At no time, at any time you send any
9 note out to us, you should never include the
10 votes you're actually taking in terms of
11 numbers.

12 Both sides have freely volunteered
13 that you can have anything read back that you
14 want to. As I've alluded to during this
15 process, there's an official court reporter
16 taking down every word that's being said. If
17 during your deliberations you would like any
18 part of the testimony read back to you, you
19 will then write us a note asking for that
20 testimony. I encourage you to be as precise as
21 possible. It makes our job a little easier.
22 If you ask for a read back of particular
23 testimony, particular point, it's going to take
24 a few minutes, we have to go through the
25 transcript and make sure we cover every area

jc-f Jury Charge

1 where that may come up. So usually it helps us
2 if you can be a little precise to accelerate
3 that process.

4 During the course of your
5 deliberations, you could examine and inspect
6 any documents admitted into evidence. Again,
7 you will send us out a note asking to see
8 whatever document it is or see all of them,
9 that's your choice.

10 The same thing with my jury charge.
11 If you need any portion of the law read back to
12 you, you will send us out a note asking for
13 that.

14 I know I have some smokers on the
15 jury. If you need to smoke at any time during
16 the deliberations, just let the officer know,
17 you'll be escorted to a place where you could
18 smoke. While those individuals are outside of
19 the jury room, deliberations should stop. You
20 should only deliberate while all 12 of you are
21 together.

22 If they have not done so already,
23 they will collect your cell phones. Please
24 turn them off. They'll obviously be given back
25 to you at the end of the day.

jc-f Jury Charge

1 After several weeks of hearing me say
2 do not discuss the case amongst yourselves, I
3 am now directing you to retire to the jury room
4 and begin discussing the case for your
5 deliberations.

6 THE COURT OFFICER: Just 12 jurors
7 only.

8 Alternates, do you have anything in
9 the jury room? No.

10 (Jurors exited the courtroom.)

11 THE COURT OFFICER: Three alternates
12 follow this officer.

13 (Alternate jurors exited the
14 courtroom.)

15 (Whereupon, deliberations commenced.)

16 (Transcript continued on next page.)

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1 SUPREME COURT OF THE STATE OF NEW YORK
2 BRONX COUNTY : CRIMINAL TERM : PART 1

3 -----
4 THE PEOPLE OF THE STATE OF NEW YORK,

5 -against-

IND. NO.
3825/2006

6 RICARDO JIMENEZ,

7 Defendant(s)

Trial

8 -----
9 July 10, 2007

10 851 Grand Concourse
11 Bronx, New York 10451

12 B E F O R E :

13 THE HONORABLE ROBERT TORRES,
14 JUSTICE.

15 A P P E A R A N C E S :

16 ROBERT T. JOHNSON, ESQ.
District Attorney, Bronx County
17 BY: LISA MATTAWAY, ESQ.,
DEBRA GUARNIERI, ESQ.
Assistant District Attorneys

18
19 PATRICK BRUNO, ESQ.
BRIAN WILSON, ESQ.
20 Attorneys for the Defendant

21 Also Present: MR. JOSEPH SHMULEWITZ, Intern

22
23 Catherine Mercorella,
24 Senior Court Reporter
25

Proceedings

1 (Whereupon, Court's Exhibit Roman
2 Numeral II, first jury note, was marked.)

3 THE COURT: At this point I'm going to
4 bring the jury in and send them home. We need the
5 alternates. I'll send them home for the night, and
6 then I will make another brief record concerning this
7 before we break.

8 (Whereupon, the alternate jurors enter the
9 courtroom.)

10 THE COURT OFFICER: Jury entering.

11 (Whereupon, the jury enters the
12 courtroom.)

13 THE COURT CLERK: Case on trial continued.
14 All sworn jurors are present.

15 THE COURT: I'm in receipt of a note:
16 "We, the jury, request, 1, the testimony of Detective
17 Serrano regarding any and all descriptions of
18 perpetrator, both defense and prosecution. 2,
19 testimony of Detective Stradford regarding any and
20 all descriptions of the perpetrator which lead to the
21 arrest of the defendant. 3, the testimony of Esco
22 Blaylock."

23 Due to the extent of what you're
24 requesting, rather than try to start it today, the
25 day is late, it has been a long day for you, we are

Proceedings

1 going to break at this time. Obviously, you're going
2 to cease your deliberations. Do not discuss the case
3 among yourselves and do not allow anyone to discuss
4 the case with you. Do not visit the location. This
5 goes for the main 12 and the alternates also.

6 I'm going to ask you to return here
7 tomorrow 10 o'clock. When you come in, at that point
8 we'll start giving you the read back. Enjoy your
9 evening.

10 (Whereupon, the jury and alternate
11 jurors exit the courtroom.)

12 THE COURT: The record should reflect that
13 both parties were shown the note almost immediately
14 upon receiving it. There has been some very brief
15 off-the-record discussion about how to respond to
16 this note. I expressed my opinion that their second
17 request, in light of the way the testimony came out,
18 might be problematic as to how to respond or what we
19 pick out as a response, if anything.

20 MR. BRUNO: May I be heard, your Honor,
21 when you're done on that subject? I have a comment.

22 THE COURT: Okay. Go ahead.

23 MR. BRUNO: Your Honor, I acknowledge we
24 had such a discussion off the record in preparation
25 for the jury coming in. I did some very, very quick

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1 work, and I'm in accord with what you said. In
2 essence, there is no description issue with reference
3 to this case in Detective Stradford's work, and I
4 went through the minutes at Page 329. The first
5 sentence is: "And when you started your
6 investigation after meeting with Mr. O'Brien, when
7 did you begin to look for Mr. Jimenez?" So, in other
8 words, as we said off the record, it's not a matter
9 of getting a description and then doing leg work
10 trying to narrow down what perpetrator I'm looking
11 for. From Stradford's point of view, and I said it
12 in summation, I'm sorry to quote myself, as I said in
13 summation, Stradford's job didn't involve
14 investigating who the killer may be. He's
15 immediately given Mr. Jimenez, so there is no
16 description issue.

17 So, my suggestion is with reference to
18 question 2 of the jury -- I would hope to reach some
19 agreement with the People -- that your Honor tell the
20 jury there is no description issue at the point that
21 Detective Stradford gets involved; he already has
22 been directed to Mr. Jimenez.

23 MS. MATTAWAY: May I be heard?

24 THE COURT: Sure.

25 MS. MATTAWAY: Your Honor, defense

1 counsel's view is wrong. My quick review of the
2 record shows specifically that at Pages 374 and 375
3 the witness is specifically asked about descriptions.
4 It's not the only place in his testimony where this
5 happens, but specifically that's what I believe
6 they're asking for. The witness is asked about the
7 description given to him -- this is regarding Esco
8 Blaylock -- about the person known to him as Leon in
9 2006, and the witness is asked at Line 20: "Did you
10 have information from Mr. Blaylock as to the race of
11 Leon?" And the answer is: "Mr. Blaylock gave me a
12 description of the person known to him as Leon." He
13 described him as a male Hispanic who could portray
14 himself to be Jamaican. That is in the record,
15 Judge. It's a description given to Stradford -- it's
16 not the only one -- and I think to just gloss over
17 this with the jury is to ignore what they want, which
18 I specifically state is this information which is in
19 the record at Pages 374 to 375, and there is more,
20 but the reality is it is now five minutes to 5:00.
21 This is a complicated note, and I do not think that
22 we are able to answer the jury's note at this time.

23 I think both sides need to carefully comb
24 through the respective witnesses' testimony,
25 Detective Serrano and Detective Stradford. Clearly,

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they want the entire testimony of Esco Blaylock, but regarding descriptions and identification, both sides have a right to comb through this material and to submit to the court what they think the jury is asking for.

Thank you.

THE COURT: First of all, quite honestly, I object to your use of the words "gloss over." Certainly, from my perspective, I was making no effort to gloss over anything. From my perspective, I was pointing out a potential difficulty in responding to a jury note. I had no intention of making a decision right away or taking a position until I have had an opportunity to go over the transcript, but I believe I'm under an obligation -- I know I'm under an obligation to make sure all sides see the note, have an opportunity to be heard as to how they think the note should be responded to and I believe I'm under an obligation if I look at a note and perceive there may be an issue there that is unclear in my mind to at least call that to the attention of the parties so they have an opportunity to look at it and respond to it. There is nobody here trying to gloss over anything.

What I was going to suggest is that we

1 break now. I wanted to make a record about that
2 briefly. We will break now. I am directing the
3 parties to be here at 9:45 tomorrow because we have
4 to go over a lot of stuff, and I want to get this to
5 the jury as quickly as possible. There is
6 substantial read back here, so even if we can't
7 resolve everything before we start, I want to be able
8 to at least start some of this read back as early as
9 possible tomorrow morning so if we can get in 15
10 minutes earlier we can hopefully reach an accord on
11 most of this, if not everything, and then we can
12 proceed.

13 If there is nothing else at this time,
14 everybody have a good evening, and I'll see you in
15 the morning.

16 MR. BRUNO: Thank you.

17 MS. MATTAWAY: Your Honor, is that 9:45?

18 THE COURT: Yes.

19 MS. MATTAWAY: Thank you.

20 (Whereupon, the trial is adjourned to July
21 11, 2007.)
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1 SUPREME COURT OF THE STATE OF NEW YORK
2 BRONX COUNTY : CRIMINAL TERM : PART 1

3 -----
4 THE PEOPLE OF THE STATE OF NEW YORK,

5 -against-

IND. NO.
3825/2006

6 RICARDO JIMENEZ,

7 Defendant(s)

Trial

8 -----
9 July 11, 2007

10 851 Grand Concourse
11 Bronx, New York 10451

12 B E F O R E:

13 THE HONORABLE ROBERT TORRES,
14 JUSTICE.

15 A P P E A R A N C E S:

16 ROBERT T. JOHNSON, ESQ.
District Attorney, Bronx County
17 BY: LISA MATTAWAY, ESQ.,
DEBRA GUARNIERI, ESQ. - A.M. Session only
18 Assistant District Attorneys

19 PATRICK BRUNO, ESQ.
BRIAN WILSON, ESQ.
20 Attorneys for the Defendant

21 Also Present: MR. JOSEPH SHMULEWITZ, Intern

22
23 Catherine Mercorella,
24 Senior Court Reporter
25

1 THE COURT: On the record, this is the
2 case on trial.

3 (The defendant is not present.)

4 THE COURT: My understanding is the
5 parties have agreed with respect to most of the read
6 back, but there may be a few areas you want to
7 discuss; is that correct?

8 MR. BRUNO: Yes, sir.

9 MS. MATTAWAY: Yes.

10 THE COURT: Whoever wants to start, I'll
11 listen.

12 MR. BRUNO: For this purpose, I waive my
13 client's production.

14 If I may, your Honor, I believe the first
15 issue we dispute would be Page 329 starting at Line
16 2.

17 Do you agree?

18 MS. MATTAWAY: Are we starting with
19 Stradford?

20 MR. BRUNO: Starting with Stradford
21 because it's chronological.

22 MS. MATTAWAY: I just want the record to
23 be clear the jury's note asks for Serrano's first. I
24 think we should respond to the note in the order that
25 the jurors wanted it.

1 THE COURT: I'm going to do that, but
2 right now I'm just addressing the areas that we need
3 to address.

4 MS. MATTAWAY: Okay.

5 MR. BRUNO: I think the first number that
6 we have a disagreement on is 329 starting at Line 2.

7 MS. MATTAWAY: I disagree.

8 MR. BRUNO: That's why we're here.

9 THE COURT: I understand you both
10 disagree. It may be helpful to me -- I assume one of
11 you wants it in.

12 MR. BRUNO: Yes, sir. I wanted it in.
13 This was that page, in fact, I quoted yesterday as
14 being the essence of the issue. I initially had said
15 that I thought none of the Stradford read back should
16 be offered. I have already compromised by agreeing
17 to any of it, from my point of view. In any event,
18 is it in front of you, sir, or do I have to quote it?

19 THE COURT: No. I have it.

20 MR. BRUNO: I believe this is the very
21 essence of the issue where Stradford, in so many
22 words, is saying there is no identification issue.
23 By the time I get involved, I'm zeroed in to Jimenez.
24 So I think to leave that out loses the very essence
25 of the Stradford read back.

1 THE COURT: Ms. Mattaway?

2 MS. MATTAWAY: Your Honor, I believe the
3 time has come and gone for summation. The jury's
4 note asks for descriptions, identification. This
5 question and answer, Page 329, Lines 2 through 6 does
6 not address the jury's note, and it should not be
7 given to them.

8 MR. BRUNO: Your Honor, if I may.

9 THE COURT: Yes.

10 MR. BRUNO: Well, we can't escape, because
11 it would be improper, in fact it was snuck in three
12 times, you have to realize, most respectfully, the
13 predicate for this question and answer is that
14 earlier it's made clear that Blaylock participated in
15 a photo array which is the essence of identification.

16 THE COURT: This particular one I'm going
17 to reserve on.

18 Let me hear what the rest of them are.

19 MR. BRUNO: Thank you, sir.

20 I believe our next disputed page, if you
21 agree, is 372, Line 13; am I correct?

22 MS. MATTAWAY: Yes.

23 MR. BRUNO: Your Honor, on this one I'm
24 maintaining that we should put in 372, Line 13
25 through 373, Line 6. I'm sorry to add a

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1 complication. The People are disputing that at Line
2 6 the witness said the name "Carlo" instead of
3 "Ricardo." We have already discussed this with the
4 reporter, and she is going to attempting to clarify
5 that one issue.

6 THE COURT: And, again, the dispute is --
7 who wants it in and who wants it out?

8 MR. BRUNO: I want it in, sir.

9 MS. MATTAWAY: May I be heard?

10 THE COURT: Go ahead.

11 MS. MATTAWAY: Your Honor, I think Page
12 372, Lines 13 through 21, the problem is "Did you
13 ascertain that the person being sought ..." it
14 doesn't say were you given a description. It's not
15 talking about race. It's not talking about clothing.
16 I'm not sure that that's responsive to the jury's
17 question.

18 In any event, I definitely think that the
19 next page, 373 Lines 2 through 6 should not come in
20 because actively seeking a suspect does not go to the
21 identification or description that the detective had
22 for the perpetrator.

23 MR. BRUNO: May I respond, your Honor?

24 THE COURT: Go ahead.

25 MR. BRUNO: Again -- and I'm not summing

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1 up -- again, this all goes back to that initial
2 point. We cannot escape the fact that the whole
3 concept of reading back Stradford is improper.
4 That's my initial position. To preclude questions
5 and answers like these totally misleads the jury and
6 becomes totally unjust to the defendant.

7 I hope it's crystal clear. In my mind, my
8 agreeing to any of these pages on Stradford is a
9 compromise with the People. I'm not summing up. I'm
10 not trying to be a bore. Stradford gets into this
11 case with one person and one person only to pursue.
12 Descriptions become meaningless. I don't mean to
13 requote my summation. The witnesses at that point
14 could have said it's a nine foot tall Japanese man,
15 he was going out and arresting Jimenez. So, to
16 preclude these questions is compounding what I
17 already believe was a gross impropriety having any
18 read back on Stradford.

19 THE COURT: What's the next area?

20 MS. MATTAWAY: 374, Line 11 through 375,
21 Line 3. I think it should come in. Defense does
22 not.

23 MR. BRUNO: Yes, your Honor. On that one,
24 it's a similar argument. Number one, when this is
25 discussed, we're going to description or the essence

1 of description, you know, helping a policeman to go
2 track down the suspect. Here at this juncture all
3 the more, it's crystal clear that Stradford has
4 targeted and will attempt to locate Leon who it turns
5 out the witnesses identify as Ricardo Jimenez.

6 In addition to compounding the
7 impropriety, Lines 2 and 3 on the next page where he
8 says, in essence, it's an Hispanic male who could
9 portray himself as a Jamaican, that's not even said
10 to Stradford.

11 Again, your Honor wouldn't know this and,
12 not said rudely, that came up at the hearing. All
13 Stradford did was quote Serrano from 18 years
14 earlier. So, because the D.A. is trying to, you
15 know, follow it technically from her point of view,
16 if we follow the letter, the words of the jury's
17 note, "descriptions," Stradford wasn't then going out
18 and saying, Okay, let me go to my computer and track
19 down Latinos.

20 THE COURT: I don't want to get into that
21 much of the argument. The issue is clear and in fact
22 the record is clear. I believe I was the first one
23 to point to the difficulties with this testimony.

24 MR. BRUNO: Correct.

25 THE COURT: Any other areas?

1 MR. BRUNO: Yes.

2 We then go to 382 -- I'm not sure what
3 line. I'm wrong?

4 MS. MATTAWAY: Yes.

5 The dispute is 382, Line 20. There is a
6 problem with the question. I don't think it makes
7 sense, and we need to find out from the reporter what
8 the question was. I'm sorry. Lines 16 through 19, I
9 think that has to be found out what the reporter took
10 down, but I think it shouldn't come in, 382, Line 20
11 through 383 Line 7, because that's description. I'm
12 just not sure if that question before -- I mean, it's
13 not a question coupled with an answer, so maybe we
14 don't need to find out what it was, but I want Page
15 382, Line 20 through 383 Line 7, but I'm just
16 pointing the court to 382, Line 16: "QUESTION: Do
17 you want to tell us, in the course of looking at the
18 folder and interviews, you interviewed various
19 races?" It doesn't make sense, and I objected, but
20 it wasn't answered anyway.

21 MR. BRUNO: That part I agree to. The
22 word probably should have been -- I don't know -- you
23 were seeking or considering people of various races.

24 With that aside, I object to the entire
25 testimony to which she refers, by the way, for the

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1 same argument. And also, again, it's not a personal
2 attack on Stradford, but your Honor just said -- your
3 Honor saw the point initially, I mean, built into
4 that answer -- Stradford was less than honest -- from
5 the day he walks in, he's looking for Jimenez. That
6 very question and answer was his playing games, and
7 it doesn't go to the jury's note.

8 In fact, I was cut off a few minutes ago.
9 If that's put in, questions like that are put in,
10 it's like Stradford then went to the computer and
11 like had to track down, for example, Latinos who
12 mimic Jamaicans. That's not what happened. So, we
13 are compounding the ambiguity and we are not
14 responding to the note.

15 MS. MATTAWAY: Your Honor, I, of course,
16 completely disagree with defense counsel's arguments.
17 The jury specifically wants the descriptions and
18 identifications the detectives had in this case, and
19 addressing defense counsel's prior argument,
20 Stradford was not testifying as to a 1989 DD5 from
21 Detective Serrano.

22 MR. BRUNO: Read the hearing minutes.

23 MS. MATTAWAY: The hearing is not the
24 record before this jury. Page 374 states in Line 25,
25 "Mr. Blaylock gave me a description..." it is first

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1 person. Detective Stradford specifically got a
2 description from Mr. Blaylock, and that is what the
3 jury wants to know. They want to know, I submit,
4 what description Detective Stradford had.

5 THE COURT: 374, I think you're leaving
6 out some sections, but I'll get to that later.

7 The next area of controversy?

8 MS. MATTAWAY: That's it. We are done
9 with this witness.

10 MR. BRUNO: I want to go into Serrano as
11 well.

12 THE COURT: Let me deal with this witness.
13 We'll do one witness at a time.

14 MR. BRUNO: May I be heard, your Honor?

15 THE COURT: Go ahead.

16 MR. BRUNO: Let me say the following, and
17 I don't mind if it's interpreted as error on my part:
18 I came in this morning hoping to maturely and
19 professionally reach a compromise. In view of the
20 position the D.A. is taking, I now take the position
21 I took yesterday afternoon. I am now urging the
22 court that your response to the jury's request for
23 any read back of Stradford should be a refusal to
24 read back anything; that you should admonish the jury
25 in your own words that since Stradford came into the

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1 case with no need to investigate as to locating a
2 suspect or narrowing down a suspect, since he came
3 into the case with a conclusion as to whom he had to
4 pick up, albeit some years later, the only target was
5 Jimenez and any reference to descriptions just become
6 improper and irrelevant; that there is no answer to
7 that question. The answer is he sought only Ricardo
8 Jimenez regardless of descriptions from 18 years ago.

9 MS. MATTAWAY: May I be heard?

10 MR. BRUNO: I withdraw any compromise to
11 any of these pages; and before she says it, it's not
12 a tantrum. I had compromised hoping to maturely and
13 professionally compromise. She wants it both ways.
14 She wants to have some testimony of improper
15 descriptions and not give me the benefit of what I'm
16 saying, that Stradford walked into this with a fait
17 d'accompli.

18 MS. MATTAWAY: May I be heard?

19 THE COURT: Go ahead.

20 MS. MATTAWAY: Your Honor, the People
21 submit the defense is trying to have this court
22 marshal the evidence for the jury, and that is
23 something this court simply cannot and should not do.
24 So, therefore, then I must now put on the record
25 those items which defense counsel and I agreed before

1 the court took the bench should come in for
2 Stradford.

3 THE COURT: I'm not doing that right now.

4 MS. MATTAWAY: All right then.

5 THE COURT: I know he withdrew his
6 consent. Let's understand something, everybody. I
7 don't need your consent.

8 MS. MATTAWAY: That's true.

9 THE COURT: All I have to do is listen to
10 you. I can make the call all on my own. Right now I
11 am focusing on the one, two, three, four, four basic
12 areas that started out as being in dispute. I'll
13 deal with that, and then we'll deal with everything
14 else.

15 MS. MATTAWAY: Yes, sir.

16 THE COURT: So I'm clear, the People are
17 asking for 374, Line 11 to 375, Line 3?

18 MS. MATTAWAY: Yes, sir.

19 THE COURT: I assume there is areas of
20 dispute concerning Detective Serrano.

21 MR. BRUNO: Yes, sir.

22 THE COURT: I will listen to that now.

23 MR. BRUNO: I believe the first would be
24 406, Line 16; is that correct?

25 MS. MATTAWAY: Defense counsel wanted to

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1 begin there, yes.

2 MR. BRUNO: Should I be heard on that,
3 your Honor?

4 THE COURT: Yes.

5 MR. BRUNO: The gist of my argument is
6 very simple. Although it's not a reference to some
7 witness reporting that description, it's obviously
8 the end product of many, many descriptions. In other
9 words, in layman's terms, it's saying after I spoke
10 to all my witnesses and garnered all their
11 descriptions, I put out an all points bulletin for a
12 male black with dark skin which was the message on
13 this finest message, so clearly that's a summary of
14 eight or nine descriptions that then follow, by the
15 way, you know, follow in the minutes.

16 MS. MATTAWAY: I submit it's nonresponsive
17 to the jury's note. What he transmitted is
18 irrelevant. The jury wants to know the description
19 given to Detective Serrano.

20 THE COURT: This one I can rule on right
21 away. The jury's note says in reference to Detective
22 Serrano, regarding any and all descriptions of the
23 perpetrator. I think this one falls within that
24 parameter.

25 Anything else regarding Detective Serrano?

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1 MR. BRUNO: I'm sorry, your Honor? You're
2 putting it in?

3 THE COURT: Technically, it should be Line
4 15: "QUESTION: Thank you, sir. Now, as a
5 result..."

6 MR. BRUNO: Give me a moment off the
7 record.

8 (Discussion off the record.)

9 MR. BRUNO: So, your Honor, we are
10 agreeing that we end that section at 407, 13, but
11 then you pick up again, am I correct, at 15?

12 MS. MATTAWAY: That has nothing to do with
13 description or identification.

14 THE COURT: Any other points of
15 controversy?

16 MR. BRUNO: Yes, your Honor.

17 I believe in dispute is 414, Line 9. Am I
18 correct? I believe I want it in, and she's disputing
19 it; am I correct?

20 MS. MATTAWAY: 414, Line 9 to where?
21 What's the end, 12?

22 MR. BRUNO: Line 11 -- right, 12. 12 is
23 the answer. Do you agree? Because earlier you
24 disputed for some reason.

25 MS. MATTAWAY: Obviously, I don't agree to

1 any of this, but this section you're talking about, I
2 would agree that's where it would end.

3 THE COURT: Why do you not agree to that?
4 I'm serious.

5 MS. MATTAWAY: Off the top of my head --
6 do you remember if this was his DD5? Defense counsel
7 was showing him DD5s that were not necessarily his
8 own and asking him if he had a description at that
9 time.

10 THE COURT: Again, the jury has asked for
11 any and all descriptions of the perpetrator.

12 MS. MATTAWAY: Correct, and I submit that
13 it was descriptions given to the witness. I had
14 objected to them at the time they were sought to be
15 introduced because they were not descriptions given
16 to him, but the court overruled my objection.

17 THE COURT: They didn't ask for
18 descriptions given to the detective. They asked for
19 any and all descriptions, and anything that relates
20 to a description I think has to go in.

21 MS. MATTAWAY: All right, then, sir.

22 MR. BRUNO: Thank you, sir.

23 Then, your Honor, I was right a few
24 minutes ago. We agreed to other material between
25 those two pages that were in dispute.

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1 MS. MATTAWAY: No, we didn't.

2 THE COURT: Again, all I want to hear is
3 what you are in dispute about. I acknowledge, Mr.
4 Bruno, you have withdrawn your consent to this other
5 stuff. When I came back in here, I wanted to know
6 what was originally in dispute.

7 Anything else involving Detective Serrano?

8 MR. BRUNO: Yes. There are a lot of
9 things. We have a problem, then. Your Honor, I'm
10 forced to address the reporter. We have a dispute as
11 to what we agreed to. I'm sorry, but I had it that
12 the only dispute -- that where we started, and in
13 effect you now said we could start at 406, Line 15, I
14 then understood we were in agreement from 407, Line
15 15. That's my Centeno questioning right through.
16 Then I go through --

17 MS. MATTAWAY: I never said that, sir.

18 MR. BRUNO: Then we have to go step by
19 step.

20 Next in dispute is 407, Line 15.

21 MS. MATTAWAY: Line 14 probably, right?

22 MR. BRUNO: Yes. Line 14 right through.

23 MS. MATTAWAY: You said 15.

24 MR. BRUNO: Right. Line 14 right on
25 through. Then I go through all these witnesses.

Proceedings

1 It's really right on through Page 414, which you just
2 granted, 414, Line 12. Right. I maintain that's all
3 included.

4 (Brief pause in the proceedings.)

5 THE COURT: Ms. Mattaway, I assume you
6 dispute all of that or just parts of that?

7 MS. MATTAWAY: I specifically dispute 413,
8 Lines 14 through 21. It's not a description. They
9 wanted descriptions.

10 MR. BRUNO: Your Honor, I, of course,
11 would disagree. If anything, it's like a negative
12 description. Telling someone that Mr. Jimenez was
13 not the person is describing that it's who the person
14 isn't.

15 MS. MATTAWAY: I submit description is
16 height, weight, race, clothing, hair, teeth.

17 THE COURT: Give me a second. I haven't
18 gotten to Line 14 yet.

19 (Brief pause in the proceedings.)

20 MS. MATTAWAY: I also believe it should
21 begin at Page 410, Line 12. Mr. Centeno never gave a
22 description, so everything is irrelevant as to him.
23 It should begin Page 410, Line 12.

24 MR. BRUNO: No. In fact, at 409, Line 1
25 there is reference to he describes a male black

Proceedings

1 fleeing the theater and the People even summed up on
2 that issue ironically. So, if nothing else, Ms.
3 Mattaway's argument just now would be in bad faith.
4 She argued against herself in summation if that's the
5 case. She went so far as to improperly sum up that
6 Centeno had identified the guy in court, and he
7 didn't.

8 MS. MATTAWAY: Summation is over.

9 MR. BRUNO: I'm sorry?

10 MS. MATTAWAY: Summation is over.

11 MR. BRUNO: Yes, but unavoidably when one
12 makes intelligent points, one can still comment on
13 them.

14 MS. MATTAWAY: Then at the most, 408, Line
15 23 to 409 Line 3, but everything else about hearing
16 three pops, everything else is irrelevant to the
17 jury's note.

18 MR. BRUNO: If you want, you're free to
19 refer --

20 THE COURT: Off the record.

21 (Discussion off the record.)

22 THE COURT: With regard to the section
23 that we just covered, Page 407, Lines 9 through 13 is
24 being read back. Page 408, Line 23 to Page 409, Line
25 3 is being read back. Page 410, Line 12 to Line 17

Proceedings

1 is being read back. Page 412, Lines 6 to 9; Page
2 413, Lines 14 through 16; Page 414, Line 9 through
3 Line 12.

4 Let's deal with the next section.

5 MR. BRUNO: I believe in contention is
6 Page 416 starting at Line 7.

7 THE COURT: 416 starting at Line 7.

8 MR. BRUNO: And, as proposed, it would go
9 down to Page 417, Line 7.

10 THE COURT: Well, the question starting at
11 Line 16 I sustained even though you withdrew your
12 objection.

13 MR. BRUNO: I'm saying obviously but for
14 whatever material must come out.

15 THE COURT: And going to Page 417, what
16 line?

17 MR. BRUNO: It would go to Line 7, but
18 then it would pick up again -- this is my proposal,
19 by the way -- I propose it picks up again at 13 and
20 would have to continue through 6 on the next page.

21 MS. MATTAWAY: I disagree.

22 MR. BRUNO: I know.

23 THE COURT: I don't see any of this coming
24 in.

25 MR. BRUNO: I'm sorry?

1 THE COURT: I don't see any of this coming
2 in as responsive to their question.

3 MS. MATTAWAY: Thank you.

4 THE COURT: Next question.

5 MR. BRUNO: So then --

6 THE COURT: Next question.

7 MR. BRUNO: The next page in dispute is
8 Page 421, Lines 3 through 6. I'm objecting. The
9 People want to put it in.

10 MS. MATTAWAY: No, no. Wait.

11 MR. BRUNO: I'm wrong? Tell me if I'm
12 wrong.

13 MS. MATTAWAY: I'm sorry. Start at the
14 beginning.

15 MR. BRUNO: Meaning, I believe in
16 contention is 421. You want to put in 3 through 6?.

17 MS. MATTAWAY: I thought it should start
18 at 420, Line 9. I think that's all description.

19 MR. BRUNO: In other words, we agreed. We
20 already told Cathy we are putting in 9 through 25.
21 That was agreed; am I correct?

22 MS. MATTAWAY: Yes.

23 MR. BRUNO: So, that's not in contention.
24 The only little piece in contention that we are
25 addressing to the judge is 421, 3 through 6.

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1 MS. MATTAWAY: And, of course, 1 through 3
2 does not come in. 421, Lines 1 through 3 is not
3 responsive.

4 MR. BRUNO: Right. It's like 4, 5, 6 is
5 in contention.

6 MS. MATTAWAY: Correct.

7 MR. BRUNO: That's it, 4, 5, 6.

8 MS. MATTAWAY: Wait a minute. You didn't
9 want it. I didn't have a problem.

10 MR. BRUNO: Yes.

11 MS. MATTAWAY: Just so we are clear.

12 THE COURT: We are talking about 421,
13 Lines 4 through 6. People think it goes in.

14 MR. BRUNO: I say it doesn't.

15 THE COURT: Defense says it doesn't.

16 MS. MATTAWAY: Correct.

17 THE COURT: It conjunction, the series of
18 questions that's conceded of going in on Page 420, I
19 believe it's Line 9, I think it's Lines 9 to 25, in
20 conjunction with that, I believe that Page 421, Lines
21 4 through 6 should also go in.

22 MR. BRUNO: Should I continue, sir?

23 THE COURT: Yes.

24 MR. BRUNO: The next contention is 429,
25 Lines 9 through 16 -- I'm sorry.

1 MS. MATTAWAY: 423, Line 10.

2 MR. BRUNO: We agreed on that.

3 MS. MATTAWAY: I'm so confused. I'm
4 sorry.

5 So, we are all in agreement until Page
6 429.

7 MR. BRUNO: That's what I'm saying.

8 MS. MATTAWAY: And what happens on 429? I
9 ended Line 9.

10 MR. BRUNO: Right. And then I have it
11 that I wanted 9 through 16.

12 THE COURT: It's sustained. I don't think
13 it should come in personally.

14 MR. BRUNO: Wait. Well, that last
15 question is -- well, then Line 15, where he says,
16 "Yes."

17 THE COURT: We'll end at Line 9. It
18 doesn't really again go back directly to descriptions
19 and that one question starting at Line 16 was an
20 objection and it was sustained.

21 MR. BRUNO: Then I show that as the last
22 -- am I correct that's the last dispute?

23 MS. MATTAWAY: Yes.

24 MR. BRUNO: That's the last issue we
25 raise.

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1 MS. MATTAWAY: That's the last thing we
2 disagree on.

3 THE COURT: Okay.

4 MR. BRUNO: Now, your Honor, in terms of
5 courtesy to the court, do you want the list of
6 everything we agreed to or it doesn't matter?

7 THE COURT: No.

8 MR. BRUNO: Thank you.

9 THE COURT: We are going to take some time
10 out. The reporter needs to go downstairs, go over
11 some stuff. When she comes back, I'm going to bring
12 the jury out. We will give them Detective Serrano's
13 read back. That should take us definitely -- I am
14 assuming it will take us up to the lunch hour or
15 close to it. We'll then break for lunch. I'll give
16 you my rulings concerning Detective Stradford, and
17 then we'll finish the afternoon with the rest of the
18 read back.

19 MS. MATTAWAY: Okay. Thank you, sir.

20 (A recess was taken.)

21 (The defendant is now present.)

22 THE COURT: Counsel, step up.

23 (An off-the-record discussion was
24 held at the bench.)

25 THE COURT: Mr. Bruno, I assume that you

Proceedings

1 advised your client that we have been reviewing the
2 potential read back all morning?

3 MR. BRUNO: Yes, sir, I did. All morning.

4 THE COURT: Will you bring the jury in.

5 THE COURT OFFICER: Alternates entering.

6 (Whereupon, the alternate jurors
7 enter the courtroom.)

8 (Whereupon, the jury enters the
9 courtroom.)

10 THE COURT CLERK: Case on trial continued,
11 People of the State of New York versus Ricardo
12 Jimenez. Defendant, his attorney, the assistant
13 district attorney and sworn jurors are present in the
14 courtroom.

15 THE COURT: Good afternoon.

16 First, I have received another note: "We,
17 the jury, we need movie photo of hallway and
18 walkway." Those photographs will be sent back in
19 with you when you go back into the jury room to
20 deliberate. I do apologize for the delay. The note
21 you sent out yesterday, we have been here all morning
22 going over the transcripts to pick out, make sure we
23 covered all the areas that address your questions.
24 At this point we will begin giving you that read
25 back. We are going to begin by reading back your

Proceedings

1 first request, which is the testimony of Detective
2 Serrano regarding any and all descriptions of the
3 perpetrator, both defense and prosecution.

4 (Whereupon, the requested portion was read
5 by the reporter.)

6 THE COURT: I think we'll stop at this
7 point.

8 Ladies and gentlemen, your lunch should be
9 arriving soon. It's not here yet. You have your
10 lunch. I direct the jurors not to deliberate while
11 you're eating your lunch. I think it's too important
12 a decision to make while you're asking someone to
13 pass the mustard or whatever. Enjoy your lunch.
14 Relax. In about an hour or so, we'll bring you back
15 out and continue the read back.

16 (Whereupon, the jury exits the courtroom.)

17 (Whereupon, the alternate jurors exit the
18 courtroom.)

19 THE COURT: All right. I'll see everybody
20 at 2:15.

21 (Whereupon, a luncheon recess was taken.)

22 A F T E R N O O N S E S S I O N

23 (Whereupon, the courtroom is sealed.)

24 THE COURT: The record should reflect that
25 I have already advised both sides that sometime

Proceedings

1 during the luncheon break I was informed by court
2 personnel that the juror we now have identified as
3 juror number 10, Miss Guerrero, indicated that there
4 is an odor, I believe an odor of alcohol, coming from
5 one of the other jurors. The message really was
6 coming from the foreperson sitting right next to her.
7 The foreperson is not the individual sitting right
8 next to her, so I have advised both parties in
9 accordance with the mandates of CPL 270.35 I'm going
10 to conduct an in camera inquiry of each juror.

11 The record should reflect due to the
12 logistical layout of this particular courtroom, we
13 are conducting this inquiry in the courtroom itself,
14 but the courtroom has been sealed in effect creating
15 an in camera atmosphere.

16 My intention is to call them one at a time
17 in order, ask them if they have noticed any odors
18 come from their fellow jurors. If so, who? Do they
19 find it distracting? Are they able to continue their
20 deliberations and when did they first notice the
21 odor?

22 I will then also ask have they noticed any
23 unusual behavior of any of the jurors; and if they
24 answer yes to that, I'll ask the same set of sub
25 questions.

Proceedings

1 Anything anybody wants to add to this or a
2 record anybody wants to make?

3 MR. BRUNO: No, no, sir. Thank you. That
4 was a fair summary of the situation.

5 MS. MATTAWAY: No. Thank you.

6 THE COURT: We can bring in juror number
7 1, Mr. Johnson.

8 (Whereupon, the juror enters the
9 courtroom.)

10 THE COURT: Hi, Mr. Johnson. You can just
11 stand there. I have a couple of quick questions for
12 you.

13 Have you noticed any unusual or peculiar
14 odors come from any of the jurors?

15 THE JUROR: Not that I know of.

16 THE COURT: Not that you know of?

17 THE JUROR: Um-um.

18 THE COURT: Have you noticed any unusual
19 behavior among any of the jurors?

20 THE JUROR: No.

21 THE COURT: Okay. I'm just going to ask
22 you do not discuss what I just asked you with any of
23 the other jurors.

24 THE JUROR: Okay.

25 (Whereupon, the juror exits the

Proceedings

1 courtroom.)

2 THE COURT: Number 2, Miss Whalen.

3 (Whereupon, the juror enters the
4 courtroom.)

5 THE COURT: This will be real quick, Miss
6 Whalen.

7 Have you noticed any unusual odors coming
8 from any of the jurors?

9 THE JUROR: No.

10 THE COURT: No.

11 Have you noticed any unusual behavior
12 coming from any of the jurors?

13 THE JUROR: Unusual behavior? Not really.

14 THE COURT: Okay. Thank you. I'm just
15 going to ask you not to discuss those questions with
16 the other jurors.

17 THE JUROR: Okay.

18 THE COURT: Thank you.

19 (Whereupon, the juror exits the
20 courtroom.)

21 THE COURT: Mr. Guzman.

22 (Whereupon, the juror enters the
23 courtroom.)

24 THE COURT: Hi, how are you doing?

25 THE JUROR: Okay.

Proceedings

1 THE COURT: I have two quick questions for
2 you.

3 THE JUROR: Sure.

4 THE COURT: Have you noticed any unusual
5 odors coming from any of the jurors?

6 THE JUROR: No.

7 THE COURT: Have you noticed any unusual
8 behavior on behalf of any of the jurors?

9 THE JUROR: No.

10 THE COURT: Okay.
11 Don't discuss those questions with anybody
12 else.

13 THE JUROR: No problem.
14 (Whereupon, the juror exits the
15 courtroom.)

16 THE COURT: Next is Santana.
17 (Whereupon, the juror enters the
18 courtroom.)

19 THE COURT: Hi. This will hopefully be
20 quick.

21 Have you noticed any unusual odors coming
22 from any of the other jurors?

23 THE JUROR: No.

24 THE COURT: Have you noticed any unusual
25 behavior by any of the jurors?

Proceedings

1 THE JUROR: No.

2 THE COURT: Okay. That's it. I'm just
3 going to ask you do not discuss those questions with
4 anybody else.

5 THE JUROR: Okay.

6 (Whereupon, the juror exits the
7 courtroom.)

8 THE COURT: Number 5, Franco.

9 (Whereupon, the juror enters the
10 courtroom.)

11 THE COURT: Hi. Just two quick questions
12 for you: Have you noticed any unusual odors coming
13 from any of the jurors?

14 THE JUROR: No.

15 THE COURT: Have you noticed any unusual
16 behavior by any of the jurors?

17 THE JUROR: No.

18 THE COURT: I'm just going to ask you to
19 not discuss those questions with anybody else.

20 (Whereupon, the juror exits the
21 courtroom.)

22 THE COURT: Mr. Knight.

23 (Whereupon, the juror enters the
24 courtroom.)

25 THE COURT: Hi, Mr. Knight. A couple of

Proceedings

1 quick questions: Have you noticed any unusual odors
2 coming from any of the jurors?

3 THE JUROR: No.

4 THE COURT: Have you noticed any unusual
5 behavior by any of the jurors?

6 THE JUROR: No.

7 THE COURT: Okay. I'll ask you not to
8 discuss those questions with anybody else, please.

9 THE JUROR: Okay.

10 (Whereupon, the juror exits the
11 courtroom.)

12 THE COURT: Number 7, Mr. Frye.

13 (Whereupon, the juror enters the
14 courtroom.)

15 THE COURT: Hi, Mr. Frye. A couple of
16 quick questions: Have you noticed any unusual odors
17 among any of the jurors?

18 THE JUROR: No.

19 THE COURT: Have you noticed any unusual
20 behavior by any of the jurors?

21 THE JUROR: No.

22 THE COURT: Okay. I'm just going to ask
23 you to not discuss those questions with anybody else.

24 THE JUROR: Okay. I won't.

25 THE COURT: Thank you.

1 (Whereupon, the juror exits the
2 courtroom.)

3 THE COURT: Juror number 8, Brooks.

4 (Whereupon, the juror enters the
5 courtroom.)

6 THE COURT: Hi.

7 THE JUROR: Hi.

8 THE COURT: A couple of quick questions:
9 Have you noticed any unusual odors among any of the
10 jurors?

11 THE JUROR: No.

12 THE COURT: Have you noticed any unusual
13 behavior by any of the jurors?

14 THE JUROR: No.

15 THE COURT: Okay. Thank you. I'm going
16 to ask you do not discuss those questions with anyone
17 else.

18 (Whereupon, the juror exits the
19 courtroom.)

20 THE COURT: Number 9, Mr. Vega.

21 (Whereupon, the juror enters the
22 courtroom.)

23 THE COURT: Hi. How are you doing?

24 THE JUROR: All right.

25 THE COURT: I have a couple of quick

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1 questions for you.

2 THE JUROR: Sure.

3 THE COURT: Have you noticed any unusual
4 odors among the jurors?

5 THE JUROR: No.

6 THE COURT: Have you noticed any unusual
7 behavior among the jurors?

8 THE JUROR: No.

9 THE COURT: Thank you.

10 I'm going to ask you do not discuss those
11 questions with anybody else.

12 (Whereupon, the juror exits the
13 courtroom.)

14 THE COURT: Miss Guerrero.

15 (Whereupon, the juror enters the
16 courtroom.)

17 THE COURT: Hi. How are you doing?

18 THE JUROR: Hi, Judge.

19 THE COURT: Did you notice any unusual
20 odors among your fellow jurors?

21 THE JUROR: Uh-hum.

22 THE COURT: One of them?

23 THE JUROR: Yeah, one of them.

24 THE COURT: Which one?

25 THE JUROR: Juror number 1.

Proceedings

1 THE COURT: Juror number 1?

2 THE JUROR: Uh-hum.

3 THE COURT: And can you describe the odor
4 for us?

5 THE JUROR: It smells like alcohol. Like,
6 I mean, drinking alcohol.

7 THE COURT: Was today the first day you
8 noticed that?

9 THE JUROR: I noticed it about a week
10 back, but I ignored it because I thought maybe it was
11 like a strong mint candy or something, but like he
12 would go to the restroom and come back and the odor
13 will be stronger.

14 THE COURT: Do you find the odor
15 distracting to you?

16 THE JUROR: It's annoying because he's
17 just there like sleeping, and he falls asleep, and
18 he's not -- he doesn't give any opinions, basically.
19 He just says -- he just said -- I guess he's being
20 negative, but he's like out of it and he's juror
21 number 1, so isn't he the one that's supposed to
22 make -- I don't know, take charge? I guess that's
23 how you say it.

24 THE COURT: It's not necessary that he
25 takes charge.

Proceedings

1 Do you think that this will affect you or
2 keep you from being able to deliberate and render a
3 verdict?

4 THE JUROR: I don't think it will keep me
5 from deliberating. I think I could still do it, but
6 it's upsetting. It's upsetting.

7 THE COURT: And based on where you sit in
8 the jury box, I assume this is a problem in the jury
9 room, not in the jury box?

10 THE JUROR: Not here. I'm in back of him.
11 Right now I'm sitting next to him. Like we are right
12 next to each other.

13 THE COURT: So, the problem is in the jury
14 room?

15 THE JUROR: Every time he talks, he covers
16 his mouth. The reason why I said something was
17 because before you come into court it says -- doesn't
18 it say, No shorts, no drinking, no this? That's why
19 I thought maybe I should tell you.

20 THE COURT: You did the right thing.
21 Is he the only one?

22 THE JUROR: Yes.

23 THE COURT: When you say seat number 1,
24 you are referring to Mr. Johnson, the foreperson?

25 THE JUROR: Yeah.

Proceedings

1 THE COURT: Anything you notice, anything
2 else you have noticed about Mr. Johnson or any of the
3 other jurors?

4 THE JUROR: No, just him. Him, he's out
5 of it. Like, he just lays there. He doesn't talk.
6 He doesn't give an opinion. He just said, "Oh,
7 that's it. I feel he's guilty. That's it." But he
8 doesn't -- like when I ask him questions, he doesn't
9 like respond to it.

10 THE COURT: Okay.

11 THE JUROR: Sorry.

12 THE COURT: You can't get into the details
13 of your conversation.

14 Have you discussed this with any other
15 jurors?

16 THE JUROR: Absolutely not.

17 THE COURT: Okay. Thank you. You could
18 go back. Do not discuss our conversation at all with
19 anyone.

20 (Whereupon, the juror exits the
21 courtroom.)

22 THE COURT: Number 11, Bennett.

23 (Whereupon, the juror enters the
24 courtroom.)

25 THE COURT: Hi. How are you doing?

Proceedings

1 THE JUROR: Good.

2 THE COURT: I have a couple of questions
3 for you.

4 THE JUROR: Sure.

5 THE COURT: Have you noticed any odors
6 among any of the jurors?

7 THE JUROR: Any?

8 THE COURT: Odors.

9 THE JUROR: No.

10 THE COURT: Have you noticed any unusual
11 behavior?

12 THE JUROR: No.

13 THE COURT: Okay. Thank you.

14 THE JUROR: Thank you.

15 THE COURT: Do not discuss those questions
16 with anyone else.

17 (Whereupon, the juror exits the
18 courtroom.)

19 THE COURT: Number 12, Santiago.

20 (Whereupon, the juror enters the
21 courtroom.)

22 THE COURT: Hi. I have a couple of quick
23 questions for you.

24 Have you noticed any odors among any of
25 the jurors?

Proceedings

1 THE JUROR: Any what? I'm sorry.

2 THE COURT: Odors, smells.

3 THE JUROR: Odors, no, sir.

4 THE COURT: Have you noticed any unusual
5 behavior among any of the jurors?

6 THE JUROR: No.

7 THE COURT: Okay. Thank you. Just don't
8 discuss any of the questions with anybody inside.

9 THE JUROR: Yes, sir.

10 THE COURT: Thank you.

11 (Whereupon, the juror exits the
12 courtroom.)

13 THE COURT: Based on Ms. Guerrero's
14 comment that she noticed this about a week ago, I am
15 going to interview the alternates also and ask them
16 the same questions.

17 (Whereupon, the alternate juror enters the
18 courtroom.)

19 THE COURT: This is Miss Galarza.

20 Hi. How are you doing? I have some
21 questions for you.

22 During your time during the trial when you
23 were in the jury room, did you notice any unusual
24 odors among any of your fellow jurors?

25 THE JUROR: No.

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1 THE COURT: Did you notice any unusual
2 behavior among any of the jurors?

3 THE JUROR: No.

4 THE COURT: Okay. Thank you.

5 I'm going to ask you not to discuss those
6 questions with anyone else. Thank you.

7 (Whereupon, the alternate juror exits the
8 courtroom.)

9 THE COURT: Miss Pryce.

10 (Whereupon, the alternate juror enters the
11 courtroom.)

12 THE COURT: Hi.

13 THE JUROR: Hi.

14 THE COURT: You can get closer. I don't
15 bite. I have two quick questions for you, hopefully
16 quick.

17 During the course of the trial when you
18 were in the jury room with the other jurors, did you
19 notice any odors, odors --

20 THE JUROR: Odors?

21 THE COURT: -- coming from any of the
22 jurors?

23 THE JUROR: No.

24 THE COURT: Did you notice any unusual
25 behavior?

1 THE JUROR: No.

2 THE COURT: Okay. I'm just going to ask
3 you to not discuss these questions with anyone else.

4 THE JUROR: Okay.

5 THE COURT: Thank you.

6 Miss Cisse.

7 (Whereupon, the juror enters the
8 courtroom.)

9 THE COURT: Hi. How are you doing?

10 THE JUROR: Hi.

11 THE COURT: I have a couple of questions
12 for you.

13 THE JUROR: Sure.

14 THE COURT: During the course of the trial
15 when you were in the jury room with the other jurors,
16 did you notice any unusual odors coming from anyone?

17 THE JUROR: No.

18 THE COURT: Did you notice any unusual
19 behavior among anybody, any of the other jurors?

20 THE JUROR: What do you mean by "unusual"?
21 That's a broad term.

22 THE COURT: Did you notice or get the
23 feeling that any of the jurors might not have really
24 been paying attention or not capable of following the
25 trial or acting like they were out of it?

Proceedings

1 THE JUROR: No.

2 THE COURT: Okay. Thank you. I'm going
3 to ask you not to discuss these questions with anyone
4 else.

5 THE JUROR: Okay.

6 THE COURT: Thank you.

7 (Whereupon, the alternate juror exits the
8 courtroom.)

9 THE COURT: Does either side wish to be
10 heard? You want a minute to confer?

11 MR. BRUNO: May I?

12 (Discussion off the record.)

13 MR. BRUNO: May I be heard, sir?

14 THE COURT: Go right ahead.

15 MR. BRUNO: The only point I want to raise
16 at this point is that I understood, as did my
17 colleague, when you questioned number 2, Whalen, her
18 response was not one of certainty. Her response was,
19 well, not really. I would urge that you question her
20 a little further and a little more pointedly, perhaps
21 saying any indicia of someone being in a less than
22 attentive state, maybe drugs, alcohol, that type of
23 thing.

24 THE COURT: Any position on that, Ms.
25 Mattaway?

Proceedings

1 MS. MATTAWAY: She sits next to the guy,
2 so maybe that's not a bad idea. Maybe she just
3 doesn't look at him either, though. I don't know.
4 Just him or any juror?

5 MR. BRUNO: Any juror.

6 THE COURT: Anything else?

7 MR. BRUNO: Nothing further.

8 THE COURT: Anything from the People?

9 MS. MATTAWAY: No.

10 THE COURT: I will call Miss Whalen out
11 again and ask her point blank, she seemed to hesitate
12 for a moment, ask her what that was about, and I
13 would specifically ask her about the smell of
14 alcohol.

15 MR. BRUNO: Thank you, sir.

16 (Whereupon, the juror enters the
17 courtroom.)

18 THE COURT: Hi again.

19 THE JUROR: Hi.

20 THE COURT: Before when you were out here
21 you seemed to slightly hesitate before you answered
22 my question.

23 THE JUROR: About?

24 THE COURT: About the odor. Was there a
25 reason why?

Proceedings

1 THE JUROR: I mean, you know, somebody was
2 sweating this morning and there was a little B.O. It
3 was hot, so there was a little body odor, but nothing
4 that was alarming.

5 THE COURT: Have you at any time today or
6 any time prior to today detected the smell of alcohol
7 on anyone?

8 THE JUROR: No, I haven't.

9 THE COURT: Thank you.

10 THE JUROR: Sure.

11 THE COURT: Again, do not discuss these
12 questions with anybody else.

13 THE JUROR: Right.

14 (Whereupon, the juror exits the
15 courtroom.)

16 MR. BRUNO: May I be heard now, sir?

17 THE COURT: Go right ahead.

18 MR. BRUNO: Your Honor, based upon the
19 statement of number 10, Miss Guerrero, but also
20 during the course of the trial I have noted that
21 number 1 looked -- well, a number of times was dozing
22 off, a number of times looked very heavy eye lidded,
23 under the circumstances I would respectfully urge
24 that we now excuse Mr. Johnson from his jury service
25 and put in his place the first remaining -- I think

Proceedings

1 she's number 2 -- but the first remaining alternate.
2 I think it's Miss Guzman.

3 MR. WILSON: Galarza.

4 MR. BRUNO: Galarza.

5 THE COURT: Ms. Mattaway, do you wish to
6 be heard?

7 MS. MATTAWAY: I believe it's the
8 defendant's choice to do this, but I think he has to
9 do it in writing. To remove a sworn juror, he must
10 consent in writing.

11 THE COURT: The substitution has to be in
12 writing.

13 MS. MATTAWAY: Right. It can't be just on
14 oral application.

15 THE COURT: Do the People wish to make any
16 record beyond that?

17 MS. MATTAWAY: We only have one juror out
18 of fifteen who seems to have a problem with it. I
19 don't know if it's more prudent in light of this and
20 now that you have asked all the jurors the question
21 about odor, maybe now they will be more attentive for
22 that and maybe after the next session of read back
23 you may get a complaint, but I don't know.

24 The court has been down this road more
25 times than I have, so I leave it to the court's

1 discretion at this point.

2 THE COURT: Okay. Give me a couple of
3 minutes.

4 (Whereupon, a recess was taken.)

5 (Whereupon, the courtroom is no longer
6 sealed.)

7 THE COURT: I apologize to the individuals
8 in the audience. I'm going to ask you to leave once
9 again.

10 (Whereupon, the courtroom is sealed.)

11 MS. MATTAWAY: Your Honor, may I be heard
12 some more on this issue?

13 THE COURT: Yes, you may.

14 The record should reflect the courtroom is
15 now sealed.

16 MS. MATTAWAY: I was just rereading my
17 notes about what -- they can't hear, right?

18 THE COURT: Their door is closed. We'll
19 close --

20 MS. MATTAWAY: -- about what juror number
21 10 said, and this part where she said, "I could keep
22 deliberating, but it's upsetting." I feel when I
23 read that, she's the one actually who may not be in a
24 position to continue to deliberate, not juror 1,
25 because no one else is noticing this. It's bothering

1 her and rather than continue with deliberations, she
2 is the one who now wants to make an issue out of it
3 and I'm wondering if she's not the one who should be
4 brought out and talked to to say -- to explore her
5 statement, "I could keep deliberating, but it's
6 upsetting to me." I don't know that she is competent
7 to continue to sit and maybe it's she who should be
8 replaced if she's the only one out of 15 people who
9 notices this and she's upset. The behavior she's
10 describing you would think someone else would notice
11 that he's out of it, he lays there, he's sleeping.
12 No one else has said that, and you'd like to think
13 that the jurors are all conscientious and they would
14 all bring it to our attention if they noticed it.
15 So, I'm starting to doubt what she said.

16 That's all.

17 THE COURT: Mr. Bruno, do you wish to be
18 heard about that?

19 MR. BRUNO: I would take no position in
20 that. If your Honor agrees to bring number 10 out
21 again, I certainly have no objection.

22 THE COURT: I resealed the courtroom
23 because I was going to recall Mr. Johnson, juror
24 number 1. I think I will call Miss Guerrero out
25 first.

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1 Are there any specific questions either
2 side would like to ask, have me ask?

3 MR. BRUNO: Your Honor, I think apropos of
4 the D.A.'s request, I think the obvious line of
5 questioning would be to the effect of if
6 hypothetically Mr. Johnson were not present as part
7 of this jury, would you have any objection whatsoever
8 to continuing as a juror.

9 MS. MATTAWAY: Your Honor --

10 THE COURT: Say that again.

11 MR. BRUNO: I would address her to the
12 effect of if Mr. Johnson were excused from the jury,
13 would you then have any objection or reservations
14 about continuing in your jury service in this matter.

15 MS. MATTAWAY: Your Honor, I believe it's
16 the opposite question. If he were not replaced, can
17 you keep deliberating with him still on the jury, not
18 if he were replaced. Is his presence upsetting you
19 so much that you cannot continue to deliberate. You
20 previously told us it's upsetting to you. Are you
21 unable to concentrate on the testimony and
22 deliberations because his presence is upsetting to
23 you, his behavior?

24 THE COURT: Bring her out, and I am going
25 to ask her questions that are more geared to getting

1 a reaction than getting a response.

2 MS. MATTAWAY: Okay.

3 THE COURT: Miss Guerrero, please.

4 (Whereupon, the juror enters the
5 courtroom.)

6 THE COURT: Ms. Guerrero, first of all,
7 I'm going to ask you to face the reporter so she can
8 hear you.

9 THE JUROR: Okay.

10 THE COURT: You referred to the actions by
11 Mr. Johnson as annoying.

12 THE JUROR: Yeah, annoying.

13 THE COURT: But you felt that you could
14 still deliberate; is that correct?

15 THE JUROR: Yes.

16 THE COURT: Are you confident that this
17 annoyance is not reaching a level that it would
18 prevent you from being able to reach a verdict?

19 THE JUROR: I'm confident that we could
20 reach a verdict without just having to like, I guess,
21 start over, I guess. I mean, I feel like I can --
22 that we could deliberate.

23 THE COURT: The annoying factor with
24 Mr. Johnson notwithstanding?

25 THE JUROR: What happened?

Proceedings

1 THE COURT: In other words, you could
2 ignore --

3 THE JUROR: I could ignore that,
4 definitely.

5 THE COURT: And you could still reach a
6 verdict?

7 THE JUROR: Yes.

8 THE COURT: Recognizing that he's annoying
9 to you, do you feel that you could still go through
10 the process and complete the process and render a
11 verdict?

12 THE JUROR: Yeah, definitely.

13 THE COURT: Okay. Thank you. You could
14 return.

15 (Whereupon, the juror exits the
16 courtroom.)

17 THE COURT: Mr. Johnson, please.

18 MR. BRUNO: Your Honor, may we approach
19 for this questioning?

20 THE COURT: Sure.

21 (Whereupon, the juror enters the
22 courtroom.)

23 THE COURT: Mr. Johnson, I'm just going to
24 ask you to face the reporter. It's easier for her to
25 hear you.

Proceedings

1 Mr. Johnson, do you feel that there is
2 anything either going on in the jury room or with
3 yourself that may affect your ability to deliberate?

4 THE JUROR: Um-um.

5 THE COURT: You have to answer yes or no.

6 THE JUROR: Oh, I'm sorry. No.

7 THE COURT: And you feel comfortable that
8 you have been attentive throughout the trial?

9 THE JUROR: Yes.

10 THE COURT: To the point that it wouldn't
11 distract you or make it more difficult for you to
12 deliberate?

13 THE JUROR: No.

14 THE COURT: Okay.

15 Is there anything going on in that jury
16 room on a personal level? Don't tell us anything
17 about the actual deliberations, but any personal
18 dynamics going on in the jury room that are making
19 you feel uncomfortable?

20 THE JUROR: Um-um, not to me.

21 THE COURT: Any parties have any
22 questions?

23 MS. MATTAWAY: I don't.

24 MR. BRUNO: I don't.

25 MR. WILSON: No.

Proceedings

1 THE COURT: Okay. Return and, again, do
2 not discuss these questions with anyone.

3 (Whereupon, the juror exits the
4 courtroom.)

5 MS. MATTAWAY: I didn't smell anything.
6 We approached. We were standing close to this juror.
7 I didn't smell anything, personally.

8 MR. BRUNO: Nor did I.

9 THE COURT: Okay. You guys want to take a
10 minute to think before you say anything?

11 (Brief pause in the proceedings.)

12 THE COURT: I'm ready when you guys are.

13 MR. BRUNO: My thoughts are on one hand
14 juror number 10 is not going to make such an
15 allegation lightly. Plus, I don't know if the record
16 was clear earlier on this point. I think we might
17 have all ignored it. I mean, she was serious enough
18 about this that she also during the lunch break asked
19 and was escorted to, I think, a pharmacy or something
20 to obtain some kind of stomach or headache remedy
21 saying that this conduct of the other juror lead her
22 to this ill feeling.

23 Your Honor, under the circumstances, I'd
24 rather exercise great caution and rid ourselves of a
25 juror who may have been drinking not only today but

1 on at least one other occasion as alluded to by Miss
2 Guerrero.

3 In addition, as I said, I, as well as my
4 cocounsel, have observed this juror being, shall we
5 say, sleepy and/or sluggish on numerous occasions
6 during the trial.

7 COURT OFFICER ELAINE DARRIGO: Miss
8 Guerrero, I was told she needed to go to get Alka
9 Seltzer. She never linked the two issues. We went
10 to get Alka Seltzer; and then as we were going, she
11 mentioned to me this issue with Mr. Johnson. So, I
12 can't say that those two things were linked.

13 MR. BRUNO: And I didn't mean to misquote
14 you.

15 COURT OFFICER ELAINE DARRIGO: It's okay.
16 Sometimes it's like telephone. One person says
17 something. So I don't know whether it was linked or
18 not. You would have to ask her that definitively to
19 find out. I would not be able to say that for sure
20 that she said that to me.

21 MS. MATTAWAY: May I be heard, your Honor?

22 THE COURT: Go right ahead.

23 MS. MATTAWAY: I believe that now that
24 both juror number 10 and juror number 1 have been
25 brought out, that it would be inappropriate to

Proceedings

1 replace juror number 1. Juror number 10 specifically
2 stated that she could continue and she could
3 deliberate and this, while annoying to her, to quote
4 the judge's words, was not something that will keep
5 her from her duty as a juror, and I think that's the
6 only standard you need to look at and juror number 1
7 came out and categorically denied any problem. So,
8 you can't just do that when there is an allegation
9 raised if it has then been explored and denied, so I
10 believe it is not appropriate based on what happened
11 most recently to replace juror number 1.

12 THE COURT: Based on the record made, I am
13 declining to remove any of the jurors at this time.

14 Specifically with regard to Mr. Johnson, I
15 did note that both times when he was called out here
16 he seems to slur his responses a little bit. If
17 memory serves me correctly, that was his demeanor
18 during the voir dire process. There was no
19 noticeable odor by the court coming from him
20 generally or when he first was brought out
21 individually. He spoke directly to the court face to
22 face and we were probably no more than about 18 to 24
23 inches apart.

24 During the course of the trial, I did
25 notice that Mr. Johnson did have his head down many

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1 times, did have his eyes closed, but I equally
2 noticed that at various times during the testimony
3 when he would have his head down or his eyes closed,
4 that either something would be said or something
5 would happen, his eyes would open, he would
6 immediately be focused on whoever was saying whatever
7 was being said at the time and seemed to me very
8 aware of what was going on, certainly not indicative
9 of somebody nodding off.

10 I will note that at this point many, if
11 not all the jurors, at various times have had their
12 head down, their eyes closed, the courtroom has
13 tended to be very hot, especially during the last few
14 days. It's a situation I have obviously been
15 observing.

16 At no time did I make any observations
17 that would cause me concern that someone was actually
18 asleep or not paying attention to what was
19 transpiring in the courtroom.

20 We are going to proceed with the jury as
21 it is now. I do have an outstanding ruling to make.
22 We could open up the courtroom again, and I'll make
23 that ruling.

24 (Whereupon, the courtroom is unsealed.)

25 THE COURT: Actually, before I render my

1 ruling, I would note when we were going through the
2 transcripts preparing to give the read back a
3 question was raised concerning Page 373 as to what
4 the parties believed was a typographical error of
5 some type. I would also note that the court reporter
6 who happened to transcribe that page did call my
7 chambers -- I am assuming just before the luncheon
8 break, I don't know exactly when -- and did leave a
9 message that it was just an error and has reprinted
10 the page with the correct indication. I'm
11 specifically referring to Line 6 of 373, change here
12 from Carlo Jimenez to Ricardo Jimenez, and I assume
13 everybody has received that newly-printed page?

14 MR. BRUNO: Yes, sir. Thank you.

15 THE COURT: Now, there is basically four
16 sections of read back of Detective Stradford's
17 testimony that have been called into question. I'm
18 going to deal with Pages 372 to 373 first. I believe
19 that defense was requesting Line 13 on Page 372
20 through Line 6 of Page 373. I am granting that
21 request only to the extent of including Page 372,
22 Lines 19 to 21.

23 (Brief pause in the proceedings.)

24 THE COURT: I apologize for jumping
25 around, but it will be clear why I'm jumping around

1 in a minute.

2 With regard to Page 382, I believe the
3 People are requesting Page 382, Line 20 to 383, Line
4 7.

5 MS. MATTAWAY: Yes, sir.

6 THE COURT: I am granting that request;
7 however, starting on Page 382 at Line 23 and going
8 through Page 383, Line 7.

9 And the People have requested the read
10 back Page 374, Line 11 to 375, Line 3 and defense has
11 requested read back of 329, Lines 2 to 6. The People
12 oppose the request for 329 referring back to the
13 actual request of the jury.

14 Let me state at the risk of repeating
15 myself, one of the difficulties with the jury's
16 request is that Detective Stradford at least twice on
17 direct testimony, once on redirect and I believe once
18 on recross, I believe, made it very clear that in
19 this case it wasn't a matter of following up on the
20 description, it was an actual name of a person he had
21 which I think is reflected in the People's request of
22 the read back on Page 374 and 375, if you read that
23 request in its entirety.

24 Given that, I believe it would be -- it
25 could conceivably be misleading to grant the People's

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1 request for the read back on Page 374 and 375 and
2 deny the defendant's read back on 329. I think when
3 you take all that in its total context, they both
4 should be given to the jury. Again, that's why I
5 jumped around, because those two had to come
6 together.

7 Now we have a new note. Why don't you
8 guys come and look at this.

9 (An off-the-record discussion was
10 held at the bench.)

11 THE COURT: If everybody is ready, I'll
12 bring the jury back. We will complete the read back
13 of Mr. Blaylock at which point I will send them back
14 to deliberate for a while at their request; and when
15 I send them back to deliberate for a while, we'll
16 send in the rest of the exhibits.

17 Jury, please.

18 THE COURT OFFICER: Judge, should I get
19 the alternates first?

20 THE COURT: Yes, please.

21 While we are waiting for the alternates,
22 do you want to mark these?

23 (Whereupon, Court's Exhibits Roman
24 Numerals III and IV, jury note number 2 and jury note
25 number 3, respectively, were marked.)

1 THE COURT OFFICER: Alternates entering.
2 (Whereupon, the alternate jurors enter the
3 courtroom.)

4 THE COURT OFFICER: Jury entering.
5 (Whereupon, the jury enters the
6 courtroom.)

7 THE COURT: I have received another note:
8 "We, the jury, request the photos that reflect the
9 actual crime scene of 1989 including photographs of
10 the deceased's body in the aisle. 2, request
11 People's 8." Then it goes on to read: "Can we
12 please take time to deliberate in between hearing the
13 end of Blaylock's testimony and the
14 previously-requested testimony from Detective
15 Stradford?" And we will adhere to that request.

16 We will now finish the read back of the
17 remaining portion of Mr. Blaylock's testimony.

18 (Whereupon, the requested portion was read
19 by the reporter.)

20 THE COURT: In accordance with your
21 request, you can go back to the jury room, continue
22 your deliberations. The last photographs and
23 exhibits you asked for will be taken in to you now.

24 When you're ready for the rest of the read
25 back, send out a note and let us know.

1 THE COURT OFFICER: Jurors step back,
2 please.

3 (Whereupon, the jury exits the courtroom.)

4 (Whereupon, the alternate jurors exit the
5 courtroom.)

6 (Whereupon, Court's Exhibit Roman Numeral
7 V, jury note number 4, was marked.)

8 (Brief pause in the proceedings.)

9 THE COURT OFFICER: Alternates entering.

10 (Whereupon, the alternate jurors enter the
11 courtroom.)

12 (Whereupon, the jury enters the
13 courtroom.)

14 THE COURT: We have another note: "We,
15 the jury, request that before we hear Detective
16 Stradford's testimony, we hear again the testimony of
17 Detective Serrano regarding any and all descriptions
18 Esco Blaylock gives about the perpetrator. After we
19 hear Detective Serrano's testimony, we would like to
20 deliberate before we hear Detective Stradford's
21 testimony."

22 We'll now give you that portion of
23 Detective Serrano's testimony you requested.

24 (Whereupon, the requested portion was read
25 by the reporter.)

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1 THE COURT: You may return to the jury
2 room to continue your deliberations.

3 (Whereupon, the jury exits the courtroom.)

4 THE COURT: Counsel want to step up?

5 (An off-the-record discussion was
6 held at the bench.).

7 THE COURT OFFICER: Alternates entering.

8 (Whereupon, the alternate jurors enter the
9 courtroom.)

10 THE COURT OFFICER: Jury entering.

11 (Whereupon, the jury enters the
12 courtroom.)

13 THE COURT: I have a note: "We, the jury,
14 need, request a break for the night."

15 We will suspend deliberations at this
16 point. Again I remind you do not discuss the case
17 among yourselves once you leave the jury room. Do
18 not allow anyone to discuss the case with you. Do
19 not visit the location. I'll see you back here
20 tomorrow morning, 10 o'clock.

21 (Whereupon, the jury exits the courtroom.)

22 (Whereupon, the alternate jurors exit the
23 courtroom.)

24 THE COURT: I'll see everyone else back
25 here tomorrow morning, 10 o'clock.

1 Before counsel leave.

2 MR. BRUNO: You want us to come up?

3 THE COURT: Yes.

4 (Whereupon, an off-the-record discussion
5 was held.)

6 (Whereupon, the case is adjourned to July
7 12, 2007.)

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1 SUPREME COURT OF THE STATE OF NEW YORK

2 BRONX COUNTY : CRIMINAL TERM : PART 1

3 -----
4 THE PEOPLE OF THE STATE OF NEW YORK,

5 -against-

IND. NO.
3825/2006

6 RICARDO JIMENEZ,

7 Defendant(s)

Trial

8 -----
9 July 12, 2007

10 851 Grand Concourse
11 Bronx, New York 10451

12 B E F O R E:

13 THE HONORABLE ROBERT TORRES,
14 JUSTICE.

15 A P P E A R A N C E S:

16 ROBERT T. JOHNSON, ESQ.
District Attorney, Bronx County
17 BY: LISA MATTAWAY, ESQ.,
Assistant District Attorney

18 PATRICK BRUNO, ESQ.
19 BRIAN WILSON, ESQ.
Attorneys for the Defendant

20
21 Also Present: MR. JOSEPH SHMULEWITZ, Intern

22
23 Catherine Mercorella,
24 Senior Court Reporter
25

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1 (Whereupon, Court's Exhibit Roman Numeral
2 VI, jury note number 5, was marked.)

3 THE COURT: Okay. I'm going to bring the
4 jury in. We are going to give them this one piece of
5 read back which I believe is not very long. So, we
6 will proceed from there.

7 (Whereupon, the alternates jurors enter
8 the courtroom.)

9 (Whereupon, the jury enters the
10 courtroom.)

11 THE COURT: We have another note: "We,
12 the jury, request to hear the previously-requested
13 testimony of Detective Stradford. We would then like
14 to deliberate. After deliberations, we would like to
15 hear Andrew O'Brien's description of the perpetrator,
16 the argument in front of the concession stand and the
17 subsequent argument and shooting in the theater."

18 We will now proceed giving you the
19 previously-requested testimony of Detective
20 Stradford.

21 (Whereupon, the requested portion was
22 read by the reporter.)

23 THE COURT: You may retire back to the
24 jury room and continue your deliberations. Send us a
25 note when you want the rest of that read back.

1 (Whereupon, the alternate jurors exit the
2 courtroom.)

3 (Whereupon, the jury exits the
4 courtroom.)

5 A F T E R N O O N S E S S I O N

6 (Whereupon, Court's Exhibit Roman Numerals
7 VI, VII and VIII, jury notes numbers 5, 6 and 7,
8 respectively, were marked.)

9 THE COURT CLERK: Case on trial continued.
10 All parties are present with the exception of the
11 sworn jurors.

12 THE COURT: Before we do anything, the
13 last jury note received yesterday, the note that read
14 "We, the jury, need, request a break for the night"
15 was not marked. As a result, the first note we
16 received this morning was originally mismarked, so
17 the last note we received last night asking for the
18 break is Court's Exhibit VI. The first note received
19 this morning essentially asking for Detective
20 Stradford's testimony is Court's Exhibit VII and the
21 very last note received asking for O'Brien's --
22 asking to hear O'Brien's testimony is Court's Exhibit
23 VIII. I would also note that that exhibit was
24 received at approximately 12:48 P.M. today, July 12,
25 but whoever wrote it out in the jury put July 11.

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1 That takes care of the housekeeping.

2 Do we have an agreement as to what is
3 being read back, what portions of Mr. O'Brien's
4 testimony are read back?

5 MR. BRUNO: There are a few disputes, your
6 Honor.

7 You made the list. You just want to go
8 through it?

9 MS. MATTAWAY: Yes.

10 THE COURT: Go ahead.

11 MS. MATTAWAY: Your Honor, I believe that
12 the read back testimony should start at Page 190,
13 Line 24.

14 THE COURT: Give me a second.

15 MR. BRUNO: That's agreed so far, sir.

16 MS. MATTAWAY: That is agreed?

17 MR. BRUNO: Yes. The starting point is
18 agreed.

19 MS. MATTAWAY: I believe it should go
20 through 191, Line 22 -- well --

21 MR. BRUNO: Your Honor, if I may, it makes
22 it a lot easier to follow. In a nutshell, I said we
23 should start where she said, 190, but I said we
24 should go nonstop through 217, Line 15 whereas the
25 People object to certain portions.

1 MS. MATTAWAY: Yes.

2 THE COURT: Okay. So let me hear. The
3 first, I assume, is 191, Line -- what did you say?

4 MS. MATTAWAY: 192, Line 11 I think should
5 be the first break. That is when we begin marking
6 photographs, and I believe that's irrelevant and
7 nonresponsive. And I think we should pick back up at
8 193, Line 5.

9 MR. BRUNO: That's fine. That I would
10 agree to.

11 MS. MATTAWAY: Okay.

12 MR. BRUNO: The next objection was you
13 wanted to take out 193, 21 through 25; am I correct?

14 MS. MATTAWAY: No, no. I was fine with
15 that.

16 MR. BRUNO: Okay. So, let's continue.

17 MS. MATTAWAY: My next objection was to
18 194, Line 21 through 195, 1, because I thought it was
19 state of mind and I didn't think it was responsive.

20 MR. BRUNO: Well, your Honor, as an
21 overview, not said in a belligerent way, you will see
22 a pattern. She basically wants to take out
23 everything that refers to the victim and his
24 accomplices having guns, being strapped, any
25 reference to their being armed, and you'll see a

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1 pattern. I think it's quite significant.

2 I mean, for example, he tells us that the
3 reason I said, yeah, go for it or go for your weapon
4 is we're all strapped. That's an intrinsic part of
5 the argument and what escalates the argument.

6 MS. MATTAWAY: I submit argument refers to
7 words uttered, not state of mind, your Honor.

8 THE COURT: As to the specific section we
9 are talking about now, 194, Line 21, I agree with the
10 People. It should not come in.

11 MR. BRUNO: So, you're taking out 21
12 through 25, sir?

13 THE COURT: Actually, to Line 1 of the
14 next page.

15 MS. MATTAWAY: Correct.

16 MR. BRUNO: Okay.

17 THE COURT: Is someone keeping track of
18 this?

19 MS. MATTAWAY: Yes. I am.

20 Now, I personally believe that the next
21 section should stop at 195, Line 12, because it is my
22 position that the defendant has gone out the door for
23 his gun, so anything after that line is not what the
24 jury wants.

25 MR. BRUNO: That's fine. I agree.

1 MS. MATTAWAY: But my notes, I don't pick
2 this up again until 199, 15 when they are finally
3 back sitting in the theater, and I submit everything
4 in between is irrelevant or nonresponsive, I should
5 say, to the jury's note.

6 MR. BRUNO: Well, no. I say it should
7 pick up immediately, but at a minimum, 196, 14
8 clearly says, "And which movie theater did you go
9 to?" I think that's the first step of activity
10 involving the deal.

11 MS. MATTAWAY: I submit they want the
12 argument and shooting in the theater, not where the
13 people took seats.

14 THE COURT: At this point I agree with Ms.
15 Mattaway. They seem to be rather specific as to what
16 they are looking at.

17 MS. MATTAWAY: So to recap, I believe the
18 previous section ends at 195, 9 and picks up again at
19 199, 15 when they are all seated in the theater and
20 the incident begins after the photographs with the
21 seats have been marked.

22 MR. BRUNO: I thought we stopped at 12 on
23 195.

24 MS. MATTAWAY: I'm sorry. Did I misspeak?
25 12. I apologize.

1 MR. BRUNO: Then you're saying go where?

2 MS. MATTAWAY: 199, 15, "So what happened
3 after you were sitting in the theater?" my question.

4 MR. BRUNO: You see, again, your Honor,
5 for example, for the sake of argument at 197, Line 7
6 I think it's significant how they sit, because we
7 have a lot of vivid testimony about one or more of
8 the victim's accomplices getting up and who's drawing
9 guns, who's saying reach for your gun, so I think
10 it's quite significant, for example, that they sit
11 two and two on the aisle -- withdrawn. It's not
12 necessarily the aisle. I misspoke.

13 THE COURT: I, again, disagree with
14 defense. I believe the jury's note is rather
15 specific. Descriptions are relevant to this
16 particular area, the subsequent argument and shooting
17 in the theater, not necessarily where anybody was.
18 So, that should not go in.

19 MS. MATTAWAY: 199, 15 is where I believe
20 it should start, but I agree. I think it should go
21 all the way now through to 210, Line 18. So, it's
22 the last seven pages counsel and I are arguing about
23 of that section.

24 MR. BRUNO: See, again I disagree and it's
25 part of that pattern. She wants to effectively cut

1 out the fact that at a minimum Patchy is now armed,
2 gun drawn, pursuing the alleged shooter. I think
3 that's part and parcel of the, quote, unquote, shoot
4 out.

5 MS. MATTAWAY: I submit they want the
6 argument and the shooting, and what Patchy was doing
7 is irrelevant. The shooting is between the defendant
8 and the victim, and the argument words are not in
9 this section.

10 MR. BRUNO: Also, your Honor, as a side
11 issue, we can't escape the fact -- and, again, I'll
12 be yelled at I'm summing up again -- we can't escape
13 the fact, at least the way the scenario unfolds,
14 there is potential that one or more of the victim's
15 accomplices shot or grazed O'Brien. So, I think this
16 becomes part and parcel of the jury's question about
17 describe the shooting in the theater.

18 MS. MATTAWAY: I believe this section
19 adequately addresses that because it ends after he
20 feels he was shot. Shaka's position on the floor or
21 Patchy's chasing the defendant I submit is
22 nonresponsive.

23 THE COURT: Well, on this one I think we
24 go down to Page 210, down to Line 22.

25 MS. MATTAWAY: Okay. Yes, sir.

1 THE COURT: I believe we read the
2 preceding questions and answers. That last two
3 questions and answers are just part of that overall
4 scenario, but I will stop on Line 22 on Page 210.

5 MS. MATTAWAY: Your Honor, continuing, I
6 believe it picks up again at 212, Lines 1 through 3,
7 then continues 17 through 213, Line 6 striking the
8 last part of the answer on Page 213 as per the
9 court's instruction.

10 MR. BRUNO: Again, my contention would
11 obviously be we go nonstop to 217, Line 15.

12 THE COURT: The section that we are
13 skipping on Page 212 was all sustained anyway, so it
14 wouldn't be read back.

15 MS. MATTAWAY: Correct, but the bottom of
16 Page 213 starting Line 16 is when Mr. O'Brien
17 describes his injuries. I feel it's nonresponsive to
18 the jury's note.

19 MR. BRUNO: Again, your Honor, this read
20 back has being incredibly sanitized to the benefit of
21 the People.

22 THE COURT: People want to stop where on
23 213?

24 MS. MATTAWAY: 213, Line 15 or perhaps at
25 Line 20 because that ends him talking about shooting

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1 or the timing of the shots, but certainly describing
2 his injuries. This defendant is not charged with
3 shooting Mr. O'Brien.

4 MR. BRUNO: Then why did you present that?
5 And so the record is clear, because it becomes
6 significant now in terms of why I'm asking for this,
7 I didn't -- as the D.A. was eliciting that testimony,
8 I didn't think it was for -- there was, for example,
9 no attempted murder charge. On the other hand, I
10 didn't object intentionally because it certainly goes
11 to the fact that a very, very realistic and
12 intelligent interpretation of the testimony could be
13 that the deceased shot O'Brien inadvertently but that
14 the deceased shot O'Brien and again the D.A. is
15 trying to sanitize the record so that the jurors
16 can't consider that or that potentially the
17 perpetrator winged O'Brien but missed the deceased
18 and one of his accomplices shot him.

19 THE COURT: I think on 213 we'll go to
20 Line 20.

21 MS. MATTAWAY: Your Honor, I believe it
22 should pick up at 214, Line 25, and I believe that it
23 should go through 217, 11.

24 Then the next section, 12 through 15 --

25 THE COURT: Wait. Wait.

Proceedings

1 MS. MATTAWAY: -- is I.D.

2 THE COURT: Are you consenting to that so
3 far?

4 MS. MATTAWAY: How far did you want to go
5 on 217?

6 MR. BRUNO: I agree to 11.

7 MS. MATTAWAY: Okay, to 11, right, and
8 then we disagreed. I believe the identification in
9 court is responsive. Counsel disagreed. Lines 12
10 through 15 on Page 217 actually continuing down
11 though Line 25 and Line 1 on 218.

12 MR. BRUNO: Yes, the identification in
13 court -- if I recall, maybe I'm wrong, if I recall,
14 they asked for description. The identification in
15 court is not a description. It's a matter of picking
16 out the fair-complexioned male Hispanic sitting
17 between two white guys with suits on.

18 THE COURT: In this regard, again, the
19 jury's note is very specific. They want descriptions
20 of the subsequent argument and the shooting. I would
21 not allow that portion, the in-court identification.

22 MS. MATTAWAY: So, we stop at Line 11,
23 sir?

24 THE COURT: Correct.

25 MS. MATTAWAY: Okay.

Proceedings

1 Now, the People submit that the next time
2 read back continues from this point should not begin
3 until Page 232, Line 25, but I believe Mr. Bruno
4 disagrees.

5 MR. BRUNO: The defense says we should
6 next go to 218, 3 through 19.

7 MS. MATTAWAY: And I submit it's post
8 shooting, and it's nonresponsive.

9 MR. BRUNO: I submit again it's another
10 example of trying to sanitize the read back to the
11 gross benefit of the People.

12 THE COURT: I agree with the People and,
13 again, I think the jury's note is very specific. Is
14 that the only objection the defense has are those
15 pages?

16 MR. BRUNO: I'd ask for one moment.

17 THE COURT: Sure.

18 (Brief pause in the proceedings.)

19 MR. BRUNO: I had maintained that we
20 should next pick up at 229, Line 22, and I'm saying
21 we should go to 229, Line 22 and continue to 230 at
22 Line 7.

23 MS. MATTAWAY: And I submit that the trial
24 testimony was clear that the witness, Mr. O'Brien,
25 did not notice or know that Shaka was shot until

Proceedings

1 after the shooting and, therefore, everything on Page
2 230 was after the shooting when he asked Patchy to
3 pull his gun, so it is therefore nonresponsive to the
4 jury's note which wants the shooting, in other words,
5 prior to Shaka being discovered dead.

6 THE COURT: I'm sorry. Mr. Bruno, where
7 did you want to stop on Page 230?

8 MR. BRUNO: I was saying stop at 230, Line
9 7.

10 THE COURT: I would agree with Mr. Bruno
11 as to that. It appears that it is describing the
12 actual shooting incident.

13 MS. MATTAWAY: Okay.

14 THE COURT: So, it should go in.

15 MS. MATTAWAY: 229, 22 through 230, Line 7
16 is in?

17 THE COURT: Correct.

18 MS. MATTAWAY: Okay.

19 MR. BRUNO: What did you say about 232?

20 MS. MATTAWAY: I think it shouldn't start
21 until Line 25.

22 MR. BRUNO: I see.

23 MS. MATTAWAY: Second word.

24 MR. BRUNO: Well, I'm saying to start at
25 Line 1 because it makes reference to who was armed

1 within the theater.

2 MS. MATTAWAY: And I say they want the
3 shooting and the argument, and I submit that whether
4 or not people were armed in the theater is similar to
5 the seats they had in the theater, it's not what the
6 jury wants. They know who was armed by now. They
7 just want to know the timing of the shots and things
8 like that, I believe.

9 MR. BRUNO: Your Honor, what we have here
10 is a shooting in a crowded theater in which there is
11 potentially as many as four rounds that we can
12 account for. To say it's irrelevant whether the
13 accomplices of the deceased had guns and may have
14 fired is just, I mean, foolish.

15 MS. MATTAWAY: It's not summations, sir;
16 it's responding to a jury note.

17 MR. BRUNO: Listen. Don't mention
18 summations again. If you want to bring in more
19 pictures of popcorn like a horse's ass, feel free to.
20 That was most undignified, opening night, popcorn and
21 theater tickets. That comforted the victim's family.
22 That's how serious this murder was. It's opening
23 night, popcorn and tickets.

24 Don't comment on summation again because
25 I'll tell you how silly yours was.

Proceedings

1 THE COURT: Are you guys finished?

2 MR. BRUNO: Yes, sir. Thank you.

3 THE COURT: Can I go back to what I have
4 to do?

5 MR. BRUNO: Yes, sir. Thank you. Forgive
6 me. This is two days already about summation.

7 THE COURT: We need to finish this and
8 give them their read back.

9 We will pick up on Page 232 at Line 24
10 technically. Again, this is information we are
11 responding to the jury's specific request.

12 MS. MATTAWAY: I believe it should
13 continue to 233, Line 2.

14 MR. BRUNO: No. I, of course, disagree
15 for the same reasons. Again, it's so blatant. She's
16 sanitizing because following that is the part about,
17 yeah, go ahead. See, all that talking is what
18 escalates the argument and the resulting level of
19 violence. I mean, just skipping the page, you don't
20 go into we don't care, I was strapped, we are four
21 dudes, he was one. I mean, to ignore that is to just
22 try to make this like there is one aggressor and that
23 these people stood there as though they were saying
24 their evening prayers, and that's just not giving the
25 jury the proper interpretation.

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1 Anyway, in any event, my proposal was that
2 we start as the D.A. indicated, but then we end at
3 234, 16.

4 THE COURT: Ms. Mattaway, where do you
5 want to end?

6 MS. MATTAWAY: I wanted to end at 233,
7 Line 2, and I compare any thoughts Mr. O'Brien had to
8 himself or any testimony between himself and counsel
9 about who was strapped or whether they were strapped
10 is akin to the seats they had in the theater. It's
11 not responsive to the jury's question, which is they
12 wanted to know the argument and the shooting.

13 THE COURT: Well, we are going to end at
14 Page 233, Line 7. The next question relates to what
15 the witness said at the time of the confrontation.

16 MR. BRUNO: Your Honor, if you would allow
17 it, this last decision of yours I really must
18 elaborate on. I think you have compounded, most
19 respectfully, compounded the error. Now you're
20 saying, okay, we'll go to Line 7 in which he's saying
21 in substance, I'm not concerned because we're four
22 dudes. It's obvious more dramatic is the fact they
23 are strapped. You're in effect cutting out the
24 compelling reason why he didn't care about a man
25 possibly going for a gun.

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1 THE COURT: Your exception is noted for
2 the record, but, again, the jury has made a specific
3 request describing the events. I'm including that
4 extra thing because it contains his comment to the
5 individual he had the confrontation with at the
6 concession stand which is, I believe, in line with
7 the jury's specific request. The rest of it does not
8 go to their request. Your exception is noted for the
9 record.

10 Next section.

11 MS. MATTAWAY: I submit it should begin --
12 withdrawn.

13 We both agreed on the next two sections,
14 and I believe it should start next at 242, 11 and
15 continue to 243, 11.

16 MR. BRUNO: And I propose we start at 242
17 11, but that we then end at 245, 25.

18 MS. MATTAWAY: Your Honor, can I just
19 state I actually agree with counsel now that I read
20 it, Line 16 on Page 243. I apologize. I missed the
21 sustained thing. I think it should go through 245,
22 14.

23 Is that what you said, Counsel?

24 MR. BRUNO: Give me one moment. I said
25 245, 25.

Proceedings

1 MS. MATTAWAY: You're right because this
2 is sustained. I concur with counsel, sir.

3 So, we are starting at 242, 11 going
4 through 245, 25; is that what we're saying?

5 MR. BRUNO: Yes. We agree to it, if his
6 Honor approves, sure.

7 Next in dispute is 246, correct?

8 MS. MATTAWAY: Yes.

9 MR. BRUNO: I was urging that we read 246,
10 21 through 247, 6.

11 MS. MATTAWAY: And I submit this is post
12 shooting when Patchy is chasing him. It's irrelevant
13 -- I'm sorry, nonresponsive.

14 THE COURT: It appears to me to be post
15 shooting also.

16 MR. BRUNO: Am I correct we have agreed to
17 247, 14 through 18?

18 MS. MATTAWAY: Yes.

19 MR. BRUNO: My notes show the next bone of
20 contention is on 249.

21 MS. MATTAWAY: I believe it should start
22 with the redirect at Line 11 on Page 249 when the
23 witness describes the defendant's appearance in
24 court.

25 MR. BRUNO: You see, again, what I argued

1 in one other instance, this goes to present
2 appearance, not a description that he may have given,
3 and, again, one cannot escape that the identification
4 in court was a ground ball. I mean, you know, it was
5 a matter of choosing. At that point, he had to
6 choose Jimenez or one of the court officers.

7 THE COURT: On this one, I tend to agree
8 with defense. Those first couple of questions are
9 referring to the identification and, again, it's not
10 what the jury asked for, so we will not start at Line
11 11; we'll start at Line 20.

12 MS. MATTAWAY: So, it's 249, Line 20.

13 I believe it should go through 251, 23.

14 MR. BRUNO: 251, Line 23?

15 MS. MATTAWAY: That's what I said. And
16 then continuing 252, 5 through 20.

17 MR. BRUNO: Well, going through to 250, 23
18 I would agree.

19 Then where do you say to pick up?

20 MS. MATTAWAY: 251, 23, you mean? 251,
21 Line 23 then continuing right into 252, 20.

22 MR. BRUNO: I lost you.

23 MS. MATTAWAY: I'm sorry.

24 MR. BRUNO: I believe we were starting at
25 250, Line 6. That's what threw me off.

1 MS. MATTAWAY: Yes.

2 MR. BRUNO: Then you're saying go nonstop
3 through 251 -- I would say through --

4 MS. MATTAWAY: You should stop at 252,
5 Line 20 because that's after the shooting, where
6 Patchy is going after the shooting. It's after the
7 shooting. It's not responsive.

8 MR. BRUNO: Again, it's a blatant attempt
9 to sanitize for your benefit.

10 Your Honor, the D.A.'s proposals are
11 consistently trying to escape the fact -- maybe I'm
12 wrong. My interpretation as what we are calling the
13 shooting has to at least include until these parties
14 vacate the theater.

15 THE COURT: It includes up until the point
16 the people are vacating the theater, not the actual
17 event as they vacate the theater.

18 MR. BRUNO: So where do we stop on 252?

19 MS. MATTAWAY: I believe we should stop at
20 Line 20.

21 MR. BRUNO: Well, except if you want to
22 split hairs, Line 21, when Patchy is going, that
23 applies when he's first trying to get off the floor
24 and trying to exit the theater. They say were you
25 flat, are you crouching, blah, blah, blah. So if we

Proceedings

1 want to make the door sill of the theater the cutoff,
2 then we have to go to 24.

3 THE COURT: We'll stop at Line 20.

4 MR. BRUNO: 20?

5 THE COURT: Yes. If we go to Line 24, it
6 also forces us to go into a whole rendition of him
7 standing up and demonstrating and again it's not what
8 the jury has asked for.

9 MS. MATTAWAY: Counsel and I agreed then
10 to the next section, Judge, on Pages 254 and 255
11 except I believe it should or do we concur it should
12 stop at 13 on Page 255?

13 MR. BRUNO: On 254 where are you saying to
14 start?

15 THE COURT: I thought we agreed.

16 MR. BRUNO: We didn't agree to anything on
17 that page for some reason.

18 MS. MATTAWAY: I'm sorry. I apologize.

19 MR. BRUNO: I have us starting again.

20 MS. MATTAWAY: Okay, 254.

21 MR. BRUNO: I'm saying start with the
22 first question, start with Line 2.

23 MS. MATTAWAY: 254, Line 2.

24 MR. BRUNO: Muzzle flash clearly is in the
25 theater.

Proceedings

1 MS. MATTAWAY: I agree.

2 MR. BRUNO: I'm saying start at Line 2.

3 Do we agree?

4 MS. MATTAWAY: Yes, we agree.

5 MR. BRUNO: Let me see how far we should
6 go, however. Then I have marked that we would stop
7 at 255, 13.

8 MS. MATTAWAY: I agree.

9 MR. BRUNO: So then we agree on that. I
10 think that's the end -- no, it's not. I'm sorry. I
11 have us next going to 257, 7.

12 MS. MATTAWAY: One moment. Page 257?

13 MR. BRUNO: 7 through 17.

14 MS. MATTAWAY: I don't think that needs to
15 come in.

16 MR. BRUNO: Okay.

17 MS. MATTAWAY: I think that's going back
18 to his state of mind, and I think it's ambiguous, at
19 which time he felt he was all right.

20 MR. BRUNO: But a couple of statements ago
21 when he said because we were four dudes, that was
22 okay, but now because there are guns mentioned,
23 again, your Honor, I think we can't escape the
24 pattern. The last ruling of yours that I took strong
25 exception to was when we cut it off, we were four

Proceedings

1 dudes, but it includes strapped. Never mind what I
2 was thinking. Now he says right now you made your
3 statement, you felt you were all right, but then we
4 mentioned that dirty word gun. Now it's
5 objectionable. So, you know, I think we have to
6 include 7 through 17.

7 THE COURT: On this one I'll agree with
8 the People for the reasons I have already mentioned
9 several times.

10 MR. BRUNO: I believe that was the end; am
11 I correct?

12 MS. MATTAWAY: That's it. We're done.

13 MR. BRUNO: Most respectfully, I have to
14 make the following statement for the record, not
15 because you ruled against me, obviously, because I
16 believe it was, most respectfully, improper.

17 I want the record clear that all of the
18 portions that you would not admit that I requested, I
19 most respectfully feel that your rulings were
20 improper. The only result was, you have heard it
21 already, the only result was we have now very
22 carefully, methodically excised from the record just
23 about every reference to the victim and his
24 accomplices being heavily armed. I believe we can't
25 escape their being heavily armed as a factor in the

Proceedings

1 argument escalating, the violence that escalated and
2 then again, as much as its being overlooked, there is
3 clear indicia, not just a wild defense counsel, there
4 is clear indicia that one or more of the injuries or
5 death could have very likely been caused by the
6 victim and/or his accomplices and that's been totally
7 excised and sanitized from this read back.

8 THE COURT: Do you wish to be heard?

9 MS. MATTAWAY: No, sir.

10 THE COURT: At the risk of sounding
11 redundant, my rulings were based on the jury's
12 request which I believe was very specific and speaks
13 for itself.

14 Your exception to my ruling is noted.

15 We'll take a brief break and then we'll
16 bring them in to give them the read back. They have
17 been informed we were working on pulling out the read
18 back.

19 (A recess was taken.)

20 THE COURT OFFICER: You want the
21 alternates?

22 THE COURT: Yes, get the alternates.

23 (Whereupon, the alternates enter the
24 courtroom.)

25 (Whereupon, the jury enters the

Proceedings

1 courtroom.)

2 THE COURT: Good afternoon. I hope you
3 had a good lunch. It took us a little bit longer to
4 put together this final read back than we
5 anticipated. I do apologize, but we'll now proceed
6 with the last note we received from you which says:
7 "We, the jury, request to hear the
8 previously-requested testimony of Andrew O'Brien.
9 Afterwards, we'll return to deliberate. We'll now
10 give you that read back.

11 (Whereupon, the requested portion was read
12 by the reporter.)

13 THE COURT: You may return to the jury
14 room and continue your deliberations.

15 (Whereupon, the jury exits the courtroom.)

16 (Whereupon, the alternate jurors exit the
17 courtroom.)

18 (Whereupon, a recess was taken.)

19 (Whereupon, the alternate jurors enter the
20 courtroom.)

21 (Whereupon, the jury enters the
22 courtroom.)

23 THE COURT: We have another note: "We,
24 the jury, need to break for the night. Would like to
25 return tomorrow."

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1 We'll suspend deliberations at this time.
2 I remind you at this point do not discuss the case
3 any further either among yourselves or with anyone
4 else. Do not visit the location. I believe I told
5 you already you should only deliberate when all 12 of
6 you are together. Have a good evening. I'll see you
7 tomorrow morning.

8 (Whereupon, the jury exits the courtroom.)

9 (Whereupon, the alternate jurors exit the
10 courtroom.)

11 THE COURT: Okay. I'll see you tomorrow.

12 (Whereupon, Court's Exhibit Roman Numeral
13 IX, jury note number 8, was marked.)

14 (Whereupon, the trial is adjourned to July
15 13, 2007.)

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INDICTMENT NUMBER 3825-06 865

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF THE BRONX : TRIAL TERM, PART 1

-----X

THE PEOPLE OF THE STATE OF NEW YORK,

- against -

VERDICT

RICARDO JIMENEZ,

Defendant (s)

-----X

851 Grand Concourse,
Bronx, New York.

July 13, 2007

B E F O R E :

HON. ROBERT TORRES,

J U S T I C E.

A P P E A R A N C E S: (Same as previously noted.)

MAUREEN NEVILLE, CSR
Official Court Reporter

(Jury note marked Court Exhibit 10, this
date.)

COURT OFFICER: Jury entering.

(Jury enters courtroom.)

COURT CLERK: Case on trial, indictment

Proceedings

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1 three-eight-two-five of 2006, People of the State
2 of New York versus Ricardo Jimenez.

3 The record should reflect the presence
4 of the A.D.A., the defense attorney, the defendant
5 and members of the sworn jury.

6 THE COURT: Be seated.

7 We have received a note: We the jury
8 have reach a verdict.

9 Will the foreperson please stand.

10 COURT CLERK: Members of the jury, how
11 say you as to count number one of the indictment
12 charging the defendant, Ricardo Jimenez, with the
13 crime of murder in the second degree, do you find
14 the defendant guilty or not guilty?

15 JURY FOREPERSON: We find the defendant
16 guilty.

17 COURT CLERK: Verdict stands recorded,
18 your Honor.

19 THE COURT: Do you wish to poll the
20 jury?

21 MR. BRUNO: Please do, sir.

22 THE COURT: Poll the jury, please.

23 COURT CLERK: You may be seated.

24 Members of the jury, harken to your
25 verdict as it stands recorded, you have said

1 through your foreperson, each of you have said
2 that you find the defendant, Ricardo Jimenez,
3 guilty of murder in the second degree.

4 Juror number one, is that verdict?

5 JUROR NUMBER ONE: Yes, guilty.

6 COURT CLERK: Juror number two, is that
7 juror verdict; yes or no?

8 JUROR NUMBER TWO: Yes.

9 COURT CLERK: Juror number three, is
10 that your verdict?

11 JUROR NUMBER THREE: Yes.

12 COURT CLERK: Juror number four, is that
13 your verdict?

14 JUROR NUMBER FOUR: Yes.

15 COURT CLERK: Juror number five, is that
16 your verdict?

17 JUROR NUMBER FIVE: Yes.

18 COURT CLERK: Juror number six, is that
19 your verdict?

20 JUROR NUMBER SIX: Yes.

21 COURT CLERK: Juror number seven, is
22 that your verdict?

23 JUROR NUMBER SEVEN: Yes.

24 COURT CLERK: Juror number eight, is
25 that your verdict?

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1 JUROR NUMBER EIGHT: Yes.

2 COURT CLERK: Juror number nine, is that
3 your verdict?

4 JUROR NUMBER NINE: Yes.

5 COURT CLERK: Juror number ten, is that
6 your verdict?

7 JUROR NUMBER TEN: Yes.

8 COURT CLERK: Juror number eleven, is
9 that your verdict?

10 JUROR NUMBER ELEVEN: Yes.

11 COURT CLERK: Juror number 12, is that
12 your verdict?

13 JUROR NUMBER: Yes.

14 COURT CLERK: Verdict stands as
15 recorded, your Honor.

16 THE COURT: I wish to thank the jury for
17 your service. I'm going to infringe on you a few
18 more minutes and ask you to go back to the jury
19 room and wait for me.

20 (Jurors exit).

21 THE COURT: Defendant will be remanded
22 for sentence. Any date as of August 6th will be
23 fine.

24 MS. MATTAWAY: Within the first two
25 weeks preferably.

Proceedings

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1 MR. BRUNO: How is August 6th, your
2 Honor?

3 MS. MATTAWAY: That's fine for me.

4 THE COURT: August 6th. Defendant is
5 remanded.

6 MS. MATTAWAY: The record should
7 reflect the members of the deceased's family will
8 wish to make a victim impact statement on that
9 date.

10 I will also file it in writing.

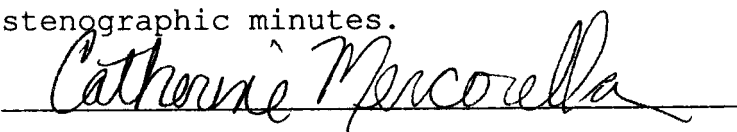
11 MR. BRUNO: Thank you, sir.

12 THE COURT: Thank you all.

13 August 6th for sentence.

14 *****

15 CERTIFIED THAT THE FOREGOING is a true
16 and correct transcript of the original
17 stenographic minutes.

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1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF BRONX: CRIMINAL TERM: PART 40

3 -----X
4 THE PEOPLE OF THE STATE OF NEW YORK :Indictment
:No. 3825/06
5 -against- :
:R
6 RICARDO JIMENEZ, :125.25
:S
7 Defendant. :Sentencing

8 -----X

851 Grand Concourse
Bronx, New York

August 16, 2007

11 B E F O R E:

12 HONORABLE ROBERT TORRES,

13 Supreme Court Justice

14 A P P E A R A N C E S:

15 ROBERT T. JOHNSON, ESQ.
District Attorney Bronx County
16 BY: LISA MATTAWAY, ESQ.
Assistant District Attorney

17 PATRICK L. BRUNO, ESQ.
Attorney for Defendant
18 99 Tulip Avenue
19 Floral Park, New York

20 * * *

21 BONNIE DUNEFSKY
22 Senior Court Reporter

23
24 **FILED**

25 **MAY 12**

SUPREME COURT CLERK'S OFFICE
BRONX COUNTY

1 THE CLERK: Calendar number nine,
2 indictment 3825 of 2006, and calendar number 10,
3 docket 25231C of 2006, both belonging to defendant
4 Ricardo A. Jimenez. Defendant is produced and before
5 the court. Counsels, appearances.

6 MR. BRUNO: For the defendant, Patrick L.
7 Bruno, 99 Tulip Avenue, Floral Park, New York. Good
8 afternoon, sir.

9 MS. MATTAWAY: Lisa Mattaway for the Office
10 of the District Attorney. Good afternoon, sir.

11 THE COURT: Good afternoon. Before we get
12 started with the real business at hand, let me deal
13 with this misdemeanor first. My understanding is that
14 there is no disposition on this and --

15 MR. BRUNO: Yes, there is no disposition.

16 THE COURT: -- it will go to trial.

17 MR. BRUNO: Yes, sir, no disposition.

18 THE COURT: Misdemeanor matter, calendar
19 number 10, 25231 of 2006 is being adjourned to T-1 for
20 September 18 for trial.

21 MR. BRUNO: Thank you.

22 MS. MATTAWAY: Thank you, sir.

23 THE COURT: With regards to the sentence
24 matter, there is a pending motion I need to address
25 before we proceed. Does either side wish to add

1 anything to their moving papers before I address the
2 motion?

3 MR. BRUNO: The defendant has nothing to
4 add. Thank you.

5 MS. MATTAWAY: The People rely on the
6 record and the papers filed with this Court.

7 THE COURT: The records should reflect that
8 the People's original response has not reached the
9 Court. However, when Mr. Bruno checked in early this
10 morning, he was kind enough to lend me his copy for a
11 few minutes. I made a copy of it and I read the
12 People's response. I am prepared to render a decision
13 at this time in light of reading the People's
14 response. I am not handing out the written decision I
15 have because based on that response, I need to add a
16 couple of lines, nothing that will, that affects my
17 ruling directly. I will provide both sides the
18 written decision, should be in the file -- actually,
19 I'll mail each one of you a copy, and that should be
20 out no later than tomorrow afternoon.

21 MR. BRUNO: Thank you.

22 THE COURT: The motion pursuant to Criminal
23 Procedure Law 330.30(2) was filed before the Court,
24 requesting that the verdict be set aside based on
25 inappropriate conduct by jurors. I have reviewed the

1 moving papers, the statute, the appropriate case law.
2 I have now reviewed the People's response. I have
3 also reviewed the trial transcripts starting when the
4 jury started their deliberations through verdict and
5 all the jury notes and the responses thereto and the
6 interactions. My written decision will contain my
7 actual -- will be the decision, but for the purposes
8 of this proceeding, the motion is being denied.

9 I do not believe the allegations rise to
10 the level of -- do not set forth a legal basis to
11 entertain such a motion. Therefore, no hearing would
12 be required. I will also note that in the middle of
13 these deliberations each individual juror,
14 deliberating juror, as well as each alternate, there
15 was an occasion that they were individually
16 interviewed because of some issues raised by this very
17 same juror, and they had ample opportunity to call
18 various matters to the Court. They did not avail
19 themselves of that.

20 I do not see holding a hearing that would
21 change anything. I also note for the record at this
22 time that juror number 10, that the jury was polled,
23 and juror number 10 did affirm the guilty verdict.

24 Based on the findings and legal arguments
25 contained in my written decision, the motion is

1 denied.

2 MR. BRUNO: Please note my exception, of
3 course, sir.

4 THE COURT: So noted. Are there any other
5 matters I need to address before we proceed with the
6 sentence?

7 MR. BRUNO: No, your Honor.

8 MS. MATTAWAY: No, sir.

9 THE COURT: Both sides have read the
10 presentence report?

11 MS. MATTAWAY: Yes, sir.

12 THE COURT: And Mr. Bruno, for the purposes
13 of this proceeding, you waive any statutory time?

14 MR. BRUNO: I have read the presentence
15 report. I waive any further delay for sentencing,
16 sir.

17 THE CLERK: Mr. Jimenez, you are being
18 arraigned for sentencing on indictment 3825 of 2006.
19 Before the judge passes sentence in this matter, the
20 Court will allow the district attorney's office to
21 make a statement in regards to your sentence, the
22 Court will then allow your defense counsel to make a
23 statement, and finally the Court will allow you to
24 make a statement in regard to your sentence.

25 People.

1 MS. MATTAWAY: Your Honor, this defendant
2 stands here before you about to be sentenced convicted
3 of murder in the second degree. The People, of
4 course, recommend that you impose the statutory
5 sentence. As the People stated on the date of the
6 verdict, many members of the deceased's family,
7 specifically his mother, his children, his sister, who
8 testified at trial as a witness, and additionally, his
9 fiance, would like to make statements before this
10 Court. Four of those people are present, the
11 deceased's mother, his two children, and his sister.

12 On behalf of the deceased's fiance, Tanya
13 Anderson, I'd like to read a brief statement that she
14 gave to me to read into the record.

15 "The day Sean was killed was one of the
16 worst days of my life. The only way I was able to
17 survive was to look at our child Adeile and realize I
18 had to be strong for her. You took away a father, a
19 son, a brother, my future husband. You sir
20 Mr. Ricardo deserve to sit in a cell for the rest of
21 your life. You destroyed a family because you were
22 unable to control your anger. Your family may be
23 hurting now, but they can see you, write you. We are
24 not afforded that luxury. I continue to suffer the
25 pain of Sean's vicious murder. I'm so glad after all

1 this time and long years, you were finally caught.
2 Now we the family can finally have some closure."

3 At this time, your Honor, I would ask the
4 deceased's mother, Marva M-A-R-V-A Worrell, to step
5 forward.

6 MS. MARVA WORRELL: Today I want to thank
7 Judge Torres --

8 THE COURT: Can you speak just a little bit
9 louder, please? I'm having trouble hearing you.

10 MS. MARVA WORRELL: Judge Torres, thank
11 you. Lisa Mattaway, you did a wonderful job. Today
12 as I stand here, there are no witness. We both lost,
13 his family and mine. The --

14 THE COURT: The reporter has to take down,
15 ma'am, what you're saying, and she is having trouble
16 hearing you also. So I know it's difficult, but we
17 need to take this down, so just speak a little bit
18 louder. It will help.

19 MS. MARVA WORRELL: Today there are no
20 witness. We are lost on both sides, my family and
21 also his family. All I ask God is to forgive him.
22 Eighteen years is a long time for a family. We have
23 lost so much in the 18 years. We have grieved, we
24 have suffered. Today I ask God to have mercy on him
25 as he had mercy on his family, and I thank everyone,

1 the jury, Lisa Mattaway, and everyone involved in this
2 case. It's been a long hard hall, and I thank God for
3 this day. Thank you.

4 THE COURT: Thank you.

5 MS. MATTAWAY: At this time I ask the
6 deceased's 19 year-old daughter, Adeile Anderson, to
7 step forward.

8 MS. ADEILE ANDERSON: It's been 18 years,
9 one month, one week and four days since my father was
10 murdered in cold blood. I'm not going to say that my
11 life was great without my father, but it wasn't the
12 best, but me as a daughter, I would never know how it
13 feels to have a father daughter relationship and I
14 would never get to know how my father really was even
15 though my family members say I act just like him.
16 Long story short this man has no idea what he has put
17 me and my family through, and he will never know, but
18 he will have the rest of his years coming to him
19 thinking about it in his cell, and that's all I have
20 to say.

21 THE COURT: Thank you.

22 MS. MATTAWAY: At this time I ask the
23 deceased's 18 year-old daughter, Shanice Cyprien, to
24 step forward, please.

25 MR. BRUNO: May I be heard, your Honor? I

1 thought the statute calls for one spokesperson to be
2 agreed upon.

3 THE COURT: Let's just finish this now. It
4 would be counterproductive to stop now. Go ahead.

5 MS. CYPRIEN: Again, it's been 18 years
6 since my father Sean Worrell's murder, and the
7 devastation of our loss still lives til this very day.
8 We are more than happy to know that justice is being
9 served on behalf of my father's case, but the truth is
10 no matter what happens, my father will never be --
11 will never come back. My sister and I were extremely
12 young when our father died, so the thought of him is
13 just another memory, is just lost memories. When I
14 realized that I would never get to hear my father's
15 voice or even just give him a hug and not being able
16 to have the opportunity to do those things, it leaves
17 you with empty emotions. There really is no happiness
18 and joy for me because all I want is something I never
19 had and will never have ever and that is the
20 opportunity for my father to be here today.

21 THE COURT: Is that it, Ms. Mattaway?

22 MS. MATTAWAY: Yes. Finally I ask the
23 deceased's sister, Lisa Worrell, to step forward.

24 MR. BRUNO: Your Honor, I once again renew
25 my objection. This is way beyond what the statute

1 calls for.

2 THE COURT: So noted.

3 MS. LISA WORRELL: First I'd like to thank
4 Judge Torress, the district attorney Lisa Mattaway,
5 Detective Stratford and the jurors for all their
6 dedication and hard work during this trial. On July
7 3, 1989 something life altering happened to my brother
8 Sean Anthony Worrell was murdered. My brother was --
9 it was so devastating to my family and most
10 importantly to my mother. I watched my mother grieved
11 every day and every night and wanted so much to ease
12 her pain. I prayed and I prayed and asked God to
13 grant me a son to help her through this time. One
14 year later my son was born, October 24, 1990. Once
15 again I saw a smile on my mother's face and I was
16 happy to do that for her. You sir have took away a
17 son, a father, a brother, and uncle and most
18 importantly a life. You showed no remorse and no
19 respect for human life. I pray today that this
20 sentencing, my brother can finally get justice that he
21 deserves. Thank you.

22 MS. MATTAWAY: Thank you.

23 THE COURT: Mr. Bruno.

24 MR. BRUNO: Yes. Your Honor, I start out
25 by saying, perhaps out of respect and deference to the

1 Worrell family, that I too come here acknowledging,
2 I'm a husband, a father, a brother, an uncle, a
3 nephew, etcetera, and I understand their pain, but my
4 role here today is one role. I'm the attorney, the
5 advocate for Mr. Jimenez, so I'm compelled to
6 emphasize the two following points:

7 Number one, since all these people just
8 spoke beyond the statute, I must point out and remind
9 your Honor that this wasn't some mugging in a dark
10 alley, it wasn't a stick-up where they shot the owner
11 of a mom and pop store -- because this impacts on
12 sentence. This wasn't some cold-blooded bizarre
13 murder. This was a silly argument in a theater in
14 which the dead guy, Sean Worrell, died, clutching a
15 .38 special that he had fired. The cops in the case
16 chose to try to sweep it under the carpet at trial,
17 but they cannot escape clutching a .38 special stolen
18 from a Pennsylvania cop with one spent round in it.

19 In addition, he goes to this theater. A
20 person would go to enjoy a movie with your family.
21 Not only was he armed, but the three hoods he was with
22 were all armed, one with a nine millimeter, one with a
23 357, and the fourth weapon was not identified. This
24 wasn't a shooting of some innocent store owner, some
25 little old lady. Forgive me, but it was the shooting

1 of a young man with three hoodlum friends who were
2 out, ready, willing and able to shoot and to do
3 mayhem. That's my first point.

4 The second point, your Honor, people are
5 saying thank you to the jury, thank you to the DA.
6 It's not sour grapes. I tried a zillion cases. This
7 was the most shocking verdict ever because -- and he
8 speaks for himself. This is a fair complexion Latino
9 man. Eight witnesses right after the murder
10 identified the shooter as a male black. Eight,
11 including the witness they relied on most of all,
12 Blalock(ph). Blalock for the first six days after the
13 shooting maintained it was a male black. All of a
14 sudden it's Ricardo Jimenez. He maintains his
15 innocence, and I thought the verdict was an outrage.
16 I have never ever taken such a position. I normally
17 just defer to the jury. This verdict was an outrage.

18 Your Honor, I know the parameters of the
19 law. I feel terrible to have to ask for such big
20 numbers. All I can ask you for, and I feel disabled
21 by it, I wish I could ask you for probation. I ask
22 you to sentence my client to the minimum of 15 years
23 to life.

24 Nothing further. Thank you.

25 THE COURT: Mr. Jimenez, you have a right

1 to be heard before I pronounce sentence. You can
2 consult with your attorney before you say anything.

3 THE DEFENDANT: All I can say right now is
4 I'm sorry for the family, what happened to their
5 family, but I didn't do it. I never was there at that
6 movie theater when that happened. The court system is
7 unfair, unfair trial. You need to look deep into the
8 case. We both had loss, my family, their brother,
9 their brother, father, nephew. The court system needs
10 to look deeper into it. Person sitting down there
11 done this is sitting down in federal prison, David
12 Rosario. That's the person sitting down -- that's who
13 they want to convict for this. The only one who knows
14 right now is me and Sean Worrell who's in his grave
15 right now. He knows the truth and the person that
16 really did it. I mean that's it. He sits in federal
17 prison right now. That's all I can say. I'm sorry to
18 the family. My family is at loss also now. I got
19 kids. That's it. That's it.

20 THE COURT: I've read the presentence
21 report. The record should reflect that I've received,
22 I forget exactly how many now, I think it's over 30
23 letters from apparently friends, family of the
24 deceased. Sentencing is one of the more difficult
25 aspects of what I do for a living. While it's nice to

1 hear members of the deceased's family thank the Court,
2 because the reality is the Court doesn't get thanked
3 for anything too often, there is no thanks needed. I
4 did not do anything. I just did my job. I presided
5 over a trial and did everything within my powers to
6 assure that there was a fair trial to all concerned.

7 This particular trial was interesting. It
8 was a very old case. It had a lot of witnesses and a
9 lot of interesting aspects to it. I really should say
10 disturbing aspects of it. It is undisputed that over
11 an argument over a bag of popcorn a life was lost.
12 Undisputed because individuals, rather than use some
13 common sense, use some brains, chose the easy way we
14 solve all our problems is with a gun. It happened 18
15 years ago, and things have just gotten worse. This is
16 a tragic situation for everyone involved, family and
17 friends of the deceased's family and friends of the
18 defendant, the community at large. So we're clear, my
19 community. This is my community. I appreciate
20 everyone's position in this case, and I appreciate,
21 Mr. Jimenez, that you maintain that it wasn't you. It
22 is clear at minimum there was a ridiculous argument
23 over a bag of popcorn, somebody decided to go out and
24 get a gun. It was equally clear that there were other
25 individuals that were also carrying firearms and shots

1 were fired and somebody ended up dead. There is
2 nothing that I can say or do that's going to change
3 any of that. There is nothing that anybody could say
4 or do at this point that could change any of that.

5 The jury found that to their satisfaction
6 beyond a reasonable doubt that individual was
7 yourself. In the course of your life you've had many
8 contacts with the criminal justice system. You've had
9 many convictions. From everything I've seen, you have
10 not been the most productive member of society. Some
11 of the things I have to take into account when I
12 sentence someone. It is difficult for people to hear,
13 I do not take into account necessarily the background
14 of the deceased. I do take into account the facts and
15 circumstances surrounding the incident. When I go out
16 and speak to community groups, I always tell them no
17 matter what I say in the courtroom, there is always
18 people who are upset with me. I accept that. I chose
19 to do this for a living. To a very large extent, what
20 my sentence will be in this case is irrelevant. It's
21 not going to change anything, not going to make
22 anything better or worse one way or the other.

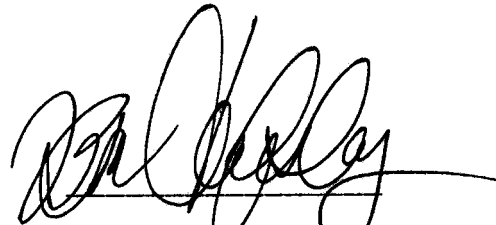
23 That being said, I sentence you to a term
24 of imprisonment of 22 years to life. The mandatory
25 surcharges must be imposed.

MR. BRUNO: Good day, your Honor.

THE COURT: Good day.

* * *

The foregoing is hereby certified to be a true and accurate transcript of the proceedings as transcribed from the stenographic notes.

A handwritten signature in black ink, appearing to read 'Bonnie Dunevsky', written over a horizontal line.

BONNIE DUNEFSKY

Senior Court Reporter